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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AK96

Prevailing Rate Systems; Change in the Survey Cycle for the Harrison, MS, Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management is issuing an interim rule to change the timing of local wage surveys in the Harrison, Mississippi, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. The purpose of this change is to avoid conducting future surveys in this area during the hurricane season.

DATES: This interim regulation is effective on October 31, 2005. The Office of Personnel Management must receive comments by November 30, 2005.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.go;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: In the past, full-scale wage surveys in the Harrison, Mississippi, nonappropriated fund (NAF) Federal Wage System (FWS) wage area were conducted in October of each even-numbered fiscal year. These interim regulations provide that full-scale wage surveys will begin in March of each even-numbered fiscal year, starting with March 2006. With this change, it will no longer be necessary to conduct wage surveys in the Harrison NAF wage area during the hurricane season.

Harrison County, MS, is the sole survey county in the Harrison NAF wage area. Because Hurricane Katrina caused substantial damage to Federal and private sector establishments in Harrison County, moving the Harrison full-scale survey cycle from October to March would allow private sector establishments to recover from the effects of Hurricane Katrina and thus provide wage data that best represent the prevailing rates paid by businesses in the area. Under 5 CFR 532.207, the scheduling of wage surveys takes into consideration the best timing in relation to wage adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, the timing of surveys for nearby or selected wage areas, and scheduling relationships with other pay surveys.

Under the interim regulations, the Department of Defense (DOD) will conduct a wage change survey for the Harrison wage area in October 2005 instead of a full-scale survey. DOD will conduct a full-scale wage survey in March 2006 and a wage change survey in March 2007 and will continue the 2-year alternating March cycle.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising the Office of Personnel Management (OPM) on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Harrison NAF wage area from October of each even-numbered fiscal year to March of each even-numbered fiscal year.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because Hurricane Katrina caused substantial economic disruption in the Gulf Coast region affecting the Government's ability to determine prevailing rates for employees of nonappropriated fund Federal activities in Harrison County. This change is needed to relieve DOD from the need to conduct a full-scale wage survey in Harrison County in October 2005.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys—[Amended]

■ 2. Appendix B to subpart B is amended by revising, under the heading for the State of Mississippi, the listing of beginning month of survey from ''October'' to ''March'' for the Harrison NAF wage area.

[FR Doc. 05–21638 Filed 10–28–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–067–1]

Emerald Ash Borer; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the emerald ash borer regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of emerald ash borer. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the emerald ash borer from infested areas in the States of Indiana, Michigan, and Ohio into noninfested areas of the United States.

DATES: This interim rule was effective October 25, 2005. We will consider all comments that we receive on or before December 30, 2005.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0099 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–067–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–067–1.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

Quarantined Areas

The EAB regulations in 7 CFR 301.53–1 through 301.53–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States. Portions of the States of Indiana, Michigan, and Ohio are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of EAB have occurred outside the quarantined areas in Michigan, Indiana, and Ohio. Specifically, infestations of EAB have been detected in Grand Traverse and Montcalm Counties, MI; Lima and Newbury Townships in LaGrange County, IN; and Auglaize, Fulton, Hancock, Henry, Lucas, Ottawa, Sandusky, and Wood Counties, OH. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Indiana, Michigan, and Ohio are conducting intensive survey and eradication programs in the infested areas. Indiana, Michigan, and Ohio have quarantined the infested areas and have restricted the intrastate movement of regulated articles from the quarantined areas to prevent the spread of EAB within each State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the spread of EAB to other States.

The regulations in § 301.53–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where EAB has been found by an inspector, where the Administrator has reason to believe that EAB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where EAB has been found.

Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the EAB.

In accordance with these criteria and the recent EAB findings described above, we are amending § 301.53–3(c) to add portions of Grand Traverse and Montcalm Counties, MI; Lima and Newbury Townships in LaGrange County, IN; and Auglaize, Fulton, Hancock, Henry, Lucas, Ottawa, Sandusky, and Wood Counties, OH, to the list of quarantined areas. An exact description of the quarantined areas can be found in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of EAB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

has waived its review under Executive Order 12866.

We are amending the EAB regulations by adding areas in Indiana, Michigan, and Ohio to the list of quarantined areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of this plant pest into noninfested areas of the United States.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act. The businesses potentially affected by this interim rule are nurseries, arborists, tree removal services, firewood dealers, garden centers, landscapers, recyclers of waste material, and lumber and building material outlets. We do not currently have information as to the actual number of such businesses in the quarantined areas added by the interim rule, nor do we have information that would indicate the percentage of those businesses that engage in the interstate movement of regulated articles and would thus be directly affected by this interim rule. It is reasonable to assume that most of the potentially affected businesses in the newly quarantined areas can be classified as small entities based on the Small Business Administration's size standards.[1]

Under the regulations, regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined if they are accompanied by a certificate or limited permit. An inspector or a person operating under a compliance agreement will issue a certificate for interstate movement of a regulated article if certain conditions are met, including that the regulated article is determined to be apparently free of EAB.

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement who would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with EAB, and, as a result, the article would be ineligible for interstate movement under a certificate. In such a case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.53–5(b).

Our experience with administering the EAB regulations and the regulations for other pests, such as the Asian longhorned beetle, that impose essentially the same conditions on the interstate movement of regulated articles lead us to believe that any economic effects on affected small entities will be small and are outweighed by the benefits associated with preventing the spread of EAB into noninfested areas of the United States.

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

[1] The overwhelming majority of entities are considered small by SBA standards.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3. Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.53–3, paragraph (c) is amended as follows:

■ a. Under the heading Indiana, by revising the entry for LaGrange County to read as set forth below.

■ b. Under the heading Michigan, by adding, in alphabetical order, entries for Grand Traverse County and Montcalm County to read as set forth below.

■ c. Under the heading Ohio, by revising the entries for Fulton County, Henry County, and Lucas County, and by adding, in alphabetical order, entries for Auglaize County, Hancock County, Ottawa County, Sandusky County, and Wood County to read as set forth below.

§ 301.53–3 Quarantined areas.

* * * * *

(c) * * *

Indiana

LaGrange County. Clay Township, Lima Township, Newbury Township, Van Buren Township.

* * * * *

Michigan

* * * * *

Grand Traverse County. Peninsula Township.

* * * * *

Montcalm County. Crystal Lake area: That portion of the county bounded by a line drawn as follows: Beginning at the intersection of East Klees Road and North Vickeryville Road; then south on North Vickeryville Road to East Stanton Road; then west on East Stanton Road to South Tow Road; then south on South Tow Road to East Sidney Road; then east on East Sidney Road to South Vickeryville Road; then south on South Vickeryville Road to East Holland Lake Road; then east on East Holland Lake Road to South Bollinger Road; then north on South Bollinger Road to East Sidney Road; then east on East Sidney

Road to South Mount Hope Road; then north on South Mount Hope Road to East Pakes Road; then west on East Pakes Road to North Blakmer Road; then north on North Blakmer Road to East Kimball Road; then west on East Kimball Road to North Crystal Road; then north on North Crystal Road to East Willard Road; then west on East Willard Road to North Waldron Road; then south on North Waldron Road to East Klees Road; then west on East Klees Road to the point of beginning.

* * * * *

Ohio

Auglaize County. Duchouquet Township.

* * * * *

Fulton County. That portion of the county east of State Route 108.

Hancock County. Allen Township.

Henry County. That portion of the county east of State Route 108 and north of the Maumee River.

Lucas County. The entire county.

Ottawa County. That portion of the county north of State Route 163 and State Route 105.

Sandusky County. That portion of the county north of U.S. Highway 20.

Wood County. (1) That portion of the county north of State Route 582.

(2) Bloom Township.

(3) Henry Township.

Done in Washington, DC, this 25th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–21608 Filed 10–28–05; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC22

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investments, Liquidity, and Divestiture; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 615 on August 31, 2005 (70 FR 51586). This final rule amends our liquidity reserve requirements for the banks of the Farm Credit System to ensure the banks have adequate liquidity. The final rule increases the minimum liquidity reserve requirement to 90 days, increases the eligible investment limit to 35 percent of total outstanding loans and requires Farm Credit banks to develop and maintain liquidity contingency plans. These amended requirements will improve the ability of Farm Credit banks to supply agricultural credit in all economic situations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulation is October 24, 2005.

EFFECTIVE DATE: The regulation amending 12 CFR part 615 published on August 31, 2005 (70 FR 51586) is effective October 24, 2005.

FOR FURTHER INFORMATION CONTACT:

Wade Wynn, Financial Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or

Laura McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

Authority: 12 U.S.C. 2252(a)(9) and (10)

Dated: October 26, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–21629 Filed 10–28–05; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–298–AD; Amendment 39–14354; AD 2005–22–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 Airplanes, and Model A320–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111 airplanes, and Model A320–200 series airplanes, that requires a detailed inspection of the tail cone triangle to determine its position, and corrective actions if necessary. This action is necessary to prevent excessive vibrations of the elevators, which could result in reduced structural integrity and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 5, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of December 5, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on June 18, 2004 (69 FR 34094). That action proposed to require a detailed inspection of the tail cone triangle to determine its position, and corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the AD

Three commenters support the proposed AD.

Request To Reference Airplane Maintenance Manual (AMM) Task

One commenter requests that we refer to AMM Task 27–34–00–820–003 as the appropriate source of service information for rigging the elevators. The commenter explains that this task, and its associated tool, rigs the elevator neutral setting to 0.5 degree nose-up in accordance with AD 2001–16–09, amendment 39–12377 (66 FR 43471, August 20, 2001). The commenter does not promote the use of the tail cone triangles because they are considered for reference only. The commenter believes that mandating the position of the tail cone reference triangle will have little effect in ensuring the proper rigging of the elevator. The commenter further stresses that if it is absolutely necessary

to mandate the rigging of the elevators, then the rigging should be mandated in accordance with AMM Task 27–34–00–820–003, rather than with Airbus Service Bulletin A320–27–1132, Revision 01, dated June 19, 2002, which was referenced in the proposed AD as the appropriate source of service information for accomplishing the required actions.

We infer that the commenter is requesting that we either withdraw the proposed AD or mandate rigging the elevators in accordance with Airbus A320 AMM Task 27–34–00–820–003, rather than inspecting for the position of the tail cone triangles in accordance with the service bulletin. We do not agree with the request to withdraw the proposed AD or with the request to require rigging the elevators in accordance with Airbus A320 AMM Task 27–34–00–820–003 rather than inspecting for the position of the tail cone triangles in accordance with the service bulletin. The service bulletin already requires rigging the elevators in accordance with A320 AMM Task 27–34–00–820–003 if the tail cone triangles are not in the correct position. However, in order to address the possibility that an operator may use AMM Task 27–34–00–820–001 or 27–34–00–820–002, for rigging the elevator using the tail cone triangle, we must ensure that the triangles are in the proper position. As stated in the proposed AD, the tail cone triangles were not installed properly on certain airplanes during production, which could result in mis-rigged elevator servo-controls. Mis-rigged elevator servo controls could result in low hinge moments, and possible vibrations if combined with elevator freeplay. The removal of the tail cone triangles, along with the removal of the AMM tasks that refer to the tail cone triangles may be acceptable as an alternative method of compliance (AMOC) with the AD. Paragraph (d) of the final rule provides for operators' requests for approval of AMOCs. No change to the final rule is necessary.

Request To Give Credit for Earlier Revision of Service Bulletin

Another commenter requests that we change the proposed AD to clarify whether or not actions accomplished before the effective date of the proposed AD in accordance with the original issue of Airbus Service Bulletin A320–27–1132, dated March 14, 2001, are acceptable for compliance with the proposed actions. (Airbus Service Bulletin A320–27–1132, Revision 01, dated June 19, 2002, was referenced as the appropriate source of service information for accomplishing the proposed actions). The commenter points out that Revision 01 of the service bulletin states ''No additional work is required by this revision for aircraft modified by any previous issue.''

We agree with the commenter. The existing paragraph (b) in the proposed AD gives credit to operators that have accomplished the actions in accordance with the original issue of the service bulletin. No change to the final rule is necessary.

Explanation of Changes to Applicability

We have revised the applicability of the AD to identify the model designations as published in the most recent type certificate data sheet for the affected model.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

We estimate that 64 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $4,160, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–22–10 Airbus: Amendment 39–14354. Docket 2002–NM–298–AD.

Applicability: Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive vibrations of the elevators, which could result in reduced structural integrity and reduced controllability of the airplane, accomplish the following:

Detailed Inspection and Corrective Action

(a) Within 800 flight hours after the effective date of this AD, perform a detailed inspection to determine the position of each tail cone triangle in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1132, Revision 01, dated June 19, 2002. If the position of the tail cone triangle is not within the limits specified in the service bulletin: Within 3,500 flight hours after the inspection, re-rig the elevator servo controls to adjust the elevator neutral setting, and change the position of the tail cone triangle, in accordance with the service bulletin.

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

Actions Accomplished Per Previous Release of the Service Bulletin

(b) Actions accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–27–1132, dated March 14, 2001, are considered acceptable for compliance with the corresponding actions required by this AD.

No Reporting Requirement

(c) Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions must be done in accordance with Airbus Service Bulletin A320–27–1132, Revision 01, excluding Appendix 01, dated June 19, 2002. 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. To get copies of this service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–514(B) R1, dated November 13, 2002.

Effective Date

(f) This amendment becomes effective on December 5, 2005.

Issued in Renton, Washington, on October 20, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21427 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21255; Airspace Docket No. 05–AGL–03]

Modification of Class E Airspace; Madison, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Madison, IN, Standard Instrument Approach Procedures have been developed for Madison Municipal Airport, Madison, IN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of existing controlled airspace for Madison, IN.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA, Terminal Operations, Central Service Office, Airspace and Procedures Branch, AG–L–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7131, or David Sapadin, (847) 294–7570.

SUPPLEMENTARY INFORMATION:

History

On Friday July 1, 2005, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Madison, IN (70 FR 38056). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Madison, IN, to accommodate aircraft executing instrument flight procedures into and out of Madison Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies an Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Madison, IN [Revised]

Madison Municipal Airport, IN
(Lat. 38°45′32″ N., long. 85°27′56″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Madison Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on October 12, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–21584 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21257; Airspace Docket No. 05–AGL–05]

Modification of Class E Airspace; Akron, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace to Akron, OH. A Standard Instrument Approach Procedure has been developed for Wingfoot Lake Airship Operations Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action increases the areas of existing controlled airspace for Akron, OH.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA, Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7131 or David Sapadin, (847) 294–7570.

SUPPLEMENTARY INFORMATION:

History

On Friday July 1, 2005, the FAA proposed to amend 14 CFR part 71 to modify Class F airspace at Akron, OH (70 FR 38055). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Akron, OH, to accommodate aircraft executing instrument flight procedures into and out of Wingfoot Lake Airship Operations Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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) does not want preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Akron, OH [Revised]

Akron-Canton Regional Airport, OH
(Lat. 40°50′58″ N., long. 81°26′32″ W.)

Akron-Canton Regional ILS Localizer
(Lat. 40°55′58″ N., long. 81°26′24″ W.)
Akron-Fulton International Airport, OH
(Lat. 41°02′15″ N., long. 81°28′01″ W.)
Ravenna, Portage County Airport, OH
(Lat. 41°12′37″ N., long. 81°15′06″ W.)
Kent State University Airport, OH
(Lat. 41°09′07″ N., long. 81°25′00″ W.)
Wingfoot Lake Airship Operations Airport, OH
(Lat. 41°00′34″ N., long. 81°21′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Akron-Canton Regional Airport, and within 4.4. miles each side of the Akron-Canton Regional Airport south localizer course extending from the 6.7-mile radius to 13.7 miles south of the airport, within a 7-mile radius of the Akron-Fulton International Airport, within a 6.3-mile radius of the Portage County Airport, within a 6.4-mile radius of the Kent State University Airport, and within a 6.0-mile radius of the Wingfoot Lake Airship Operations Airport.

* * * * *

Issued in Des Plaines, Illinois on October 12, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operator.

[FR Doc. 05–21586 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22514; Airspace Docket No. 05–AGL–07]

Modification of Legal Description of Class D Airspace; Rapid City, SD; Modification of Legal Description of Class D Airspace; Rapid City Ellsworth AFB, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Rapid City Regional Airport, SD, and Rapid City Ellsworth AFB, SD, revealed discrepancies in the legal descriptions for both airports as contained in FAA order 7400.9M. This action corrects those discrepancies by modifying the legal descriptions.

DATES: Effective 0901 UTC, December 22, 2005.

Comments must be received on or before November 28, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2005–22514/Airspace Docket No. 05–AGL–07, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address. An informal docket may also be examined during normal business hours at FAA Terminal Operations, Central Service Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, Federal Aviation Administration, telephone (847) 294–7131, or David Sapadin (847) 204–7477.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the legal description for the Class D airspace area for Rapid City Regional Airport, SD, and modifies the legal description for the Class D airspace area at Rapid City Ellsworth AFB, SD. The areas will be depicted on appropriate aeronautical charts. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22514/Airspace Docket No. 05–AGL–07.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and

unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.7 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace

* * * * *

AGL SD D Rapid City, SD [Revised]

Rapid City Regional Airport, SD
(Lat. 44°02′43″ N., long., 103°03′27″ W.)
Rapid City Ellsworth AFB, SD
(Lat. 44°08′42″ N., long., 103°06′13″ W.)

That airspace extending upward from the surface to and including 5,700 feet MSL within a 4.4-mile radius of the Rapid City Regional Airport, excluding the portion north of a line between the intersection of the Rapid City Regional Airport 4.4-mile radius and the Rapid City Ellsworth AFB, SD, 4.7-mile radius. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in advance by Notice to Airmen.

* * * * *

AGL SD D Rapid City Ellsworth AFB, SD [Revised]

Rapid City Ellsworth AFB, SD
(Lat. 44°08′42″ N., long., 103°06′13″ W.)
Rapid City Regional Airport, SD
(Lat. 44°02′43″ N., long., 103°03′27″ W.)

That airspace extending upward from the surface to and including 5,800 feet MSL and within a 5.9-mile radius of Rapid City Ellsworth AFB to the Rapid City Regional Airport 4.4-mile radius, excluding that airspace south of a line between the intersection of the Ellsworth AFB 4.7-mile radius and the Rapid City Regional Airport 4.4-mile radius. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Dated: Issued in Des Plaines, Illinois on October 12, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–21583 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 736

[Docket No. 050803216–5216–01]

RIN 0694–AD30

Technical Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: On September 16, 2005, the Bureau of Industry and Security published a final rule that amended the Export Administration Regulations by making several revisions and clarifications. This document corrects an inadvertent error that the final rule made in redesignating several paragraphs. This correction ensures that paragraphs in Supplement No. 2 to part 736 of the Export Administration Regulations are consistently designated.

DATES: This rule is effective October 31, 2005.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington DC 20230. Please refer to regulatory identification number (RIN) 0694–AD30 in all comments, and in the subject line of email comments.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440, Email: *tmooney@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: This document corrects an inadvertent error in the final rule that was published by the Bureau of Industry and Security (BIS) on Friday, September 16, 2005 (70 FR 54626). The September 16, 2005 final rule amended the Export Administration Regulations (EAR) by, among other things, deleting a redundant paragraph and redesignating the remaining paragraphs in Administrative Order No. 2, Supplement No. 2 to part 736 of the EAR. The September 16, 2005 rule contained an inadvertent error in the amendatory text. Specifically, the final rule redesignated some paragraphs in Supplement No. 2 to part 736 of the EAR, but failed to redesignate all of them. To fix this inadvertent error, this document inserts amendatory text on page 54628 of the **Federal Register** of Friday, September 16, 2005, to redesignate the capital letter subparagraphs in Supplement No. 2 to part 736 of the EAR to the roman numeral level. This change will ensure that all relevant paragraphs in Supplement No. 2 to part 736 will be properly designated.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these

collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by email to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

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

4. The Department finds that there is good cause under 5 U.S.C. 553 (b)(3) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because it is unnecessary. This regulation deletes a redundant paragraph and redesignates the remaining paragraphs in one section for clarity; inserts material inadvertently omitted from previous rules in three places in the EAR; clarifies instructions for applying for authorization to transfer items subject to the EAR in-country; adds an alias for a listed entity on the Entity List; and removes references to two ECCNs that do not exist. The revisions made by this rule are administrative in nature and do not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) are not applicable.

List of Subjects in 15 CFR Part 736

Exports.

■ Accordingly, for the reasons set out in the preamble, 15 CFR part 736 is amended as follows:

■ 1. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Pub. L. 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SUPPLEMENT NO. 2 TO PART 736—[CORRECTED]

■ 2. Supplement No. 2 to part 736, is amended in ''Administrative Order Two'' by:

■ a. Redesignating paragraphs (a)(2)(A) through (E) as paragraphs (a)(2)(i) through (v), respectively; and

■ b. Redesignating paragraphs (a)(3)(A) through (D) as paragraphs (a)(3)(i) through (iv), respectively.

Dated: October 20, 2005.

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 05–21351 Filed 10–28–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 17, 19, 24, 25, 26, 27, and 31

[T.D. TTB–36]

RIN 1513–AB04

Suspension of Special (Occupational) Tax (2004R–778P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary rule; Treasury decision.

SUMMARY: In this temporary rule, the Alcohol and Tobacco Tax and Trade Bureau amends its regulations relating to special (occupational) tax, to reflect a 3-year tax suspension effected by section 246 of the American Jobs Creation Act of 2004. Section 246 amends the Internal Revenue Code of 1986 to provide that, during the period from July 1, 2005, through June 30, 2008, the rate of special (occupational) tax on certain occupations will be zero. The occupations affected by the 3-year tax suspension are: Manufacturers of nonbeverage products who claim tax drawback; proprietors of distilled spirits plants, alcohol fuel plants, bonded and taxpaid wine premises, and breweries; and wholesale and retail dealers in distilled spirits, wine, and beer. The requirements to register annually and keep prescribed records remain in effect. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* This temporary rule is effective as of July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Simon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, Suite 200E, 1310 G Street, NW., Washington, DC 20220; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

Various provisions within subtitle E of the Internal Revenue Code of 1986 (IRC) impose an annual tax on certain business occupations. This tax is referred to as the ''special (occupational) tax'' or more briefly as the ''special tax.'' In general, payment of this tax is a prerequisite for engaging in any of the covered occupations. The current annual rates of special (occupational) tax are as follows:

Manufacturer of Nonbeverage Products	$ 500
Proprietor of Distilled Spirits Plant	1,000
Proprietor of Alcohol Fuel Plant	1,000
Proprietor of Bonded Wine Cellar	1,000
Proprietor of Bonded Wine Warehouse	1,000
Proprietor of Taxpaid Wine Bottling House	1,000
Brewer	1,000
Wholesale Liquor Dealer or Beer Dealer	500
Retail Liquor Dealer or Beer Dealer	250
User of, or Dealer in, Specially Denatured Alcohol	250
User of Tax-Free Alcohol	250
Manufacturer of Tobacco Products	1,000
Manufacturer of Cigarette Papers and Tubes	1,000
Export Warehouse Proprietor	1,000

Each tax year for payment of special (occupational) tax runs from July 1 through the following June 30. In addition, special tax returns, with payment of the appropriate tax, must be submitted before beginning a new business, and each year thereafter on or before July 1.

Some of the covered occupations are subject to a reduced rate for small entities. A small entity, engaging in an occupation subject to a basic rate of $1,000 per year, is subject to a reduced rate of just $500 per year. However, a small alcohol fuel plant is exempt from special tax. Educational institutions using small quantities of tax-free or specially denatured alcohol are also exempt from special tax.

Besides requiring payment of the annual tax, the IRC requires an annual registration of persons subject to special tax and imposes certain recordkeeping requirements. Further, liquor (distilled spirits, wine, and beer) dealers must purchase distilled spirits from (1) a wholesale liquor dealer who has paid special tax for the location where the

sale is consummated, (2) a wholesale dealer in liquors who is exempt, at the place where such purchase is made, from the payment of the tax, or (3) a person who is not subject to wholesale liquor dealer's special tax where the sale is consummated.

Current regulations relating to special (occupational) tax are contained in title 27 of the Code of Federal Regulations (27 CFR) and are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB). These regulations provide for a single form to be used both as a tax return and a registration. The form is TTB Form 5630.5, ''Special Tax Registration and Return.'' Persons who complete this form and pay the appropriate tax are issued a ''Special Tax Stamp,'' which functions as a receipt for payment of the tax and also provides evidence of registration. This tax stamp is not a license and does not authorize any activity that would be illegal under any other Federal or State law.

American Jobs Creation Act of 2004

On October 22, 2004, President Bush signed into law the American Jobs Creation Act of 2004 (the Act), Pub. L. 108–357, 118 Stat. 1418. Section 246 of the Act, entitled ''Suspension of Occupational Taxes Relating to Distilled Spirits, Wine, and Beer,'' amended subpart G of part II of subchapter A of chapter 54 of the IRC by redesignating section 5148 as section 5149 and adding a new section 5148 (26 U.S.C. 5148) entitled ''Suspension of Occupational Tax.'' New section 5148 provides that, during the 3-year period from July 1, 2005, through June 30, 2008, the rate of special (occupational) tax imposed under sections 5081, 5091, 5111, 5121, and 5131 will be zero.

The effect of new section 5148 is that the following occupations are not subject to payment of special (occupational) tax during the suspension period: Manufacturer of nonbeverage products, proprietor of distilled spirits plant, (including an alcohol fuel plant), proprietor of bonded wine cellar, proprietor of bonded wine warehouse, proprietor of taxpaid wine bottling house, brewer, wholesale liquor dealer or beer dealer, and retail liquor dealer or beer dealer.

On the other hand, the following occupations, which are not covered by the IRC sections listed in new section 5148, are not affected by the suspension and remain subject to the special (occupational) tax during the suspension period: User of or dealer in specially denatured alcohol, user of tax-free alcohol, manufacturer of tobacco products (that is, cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco), manufacturer of cigarette papers or tubes, and export warehouse proprietor (for the export of tobacco products, cigarette papers, or cigarette tubes).

Although the tax rate for the occupations affected by the suspension will be zero during the suspension period, new section 5148 further provides that persons engaging in those occupations must still register annually and comply with applicable recordkeeping requirements. Finally, section 246 of the Act amended section 5117 of the IRC (26 U.S.C. 5117) by adding a new subsection (d) to provide that during the suspension period a dealer may purchase distilled spirits, for resale, only from persons required to keep records as a wholesale liquor dealer, except as otherwise specifically provided by law or regulations.

Regulations Changes in General

In order to reflect the changes made by section 246 of the Act, this document generally amends the TTB regulations by adding the requirements that are applicable during the suspension period to the current regulatory provisions, which remain applicable at all times outside the suspension period. The regulatory amendments therefore refer to the fact that the suspension is for a fixed period with a beginning and ending date. Accordingly, provided that no further changes are made to the special (occupational) tax statutory provisions, the regulatory provisions that were in effect prior to the adoption of the changes made by section 246 of the Act will operate without the need for further regulatory changes upon termination of the suspension period.

TTB Form 5630.5, ''Special Tax Registration and Return,'' will continue in use for registration purposes during the suspension period. All persons engaged in occupations currently subject to special tax must continue to register by completing and submitting this form annually during the suspension period. Persons in occupations not affected by the suspension must continue to pay the current rate of tax as well.

Because the primary purpose of the ''Special Tax Stamp'' is to serve as a receipt for payment of the tax, TTB has decided not to issue these stamps during the suspension period, except for those occupations that will remain subject to payment of a special (occupational) tax.

Specific Types of Regulatory Changes

Each regulation referring to an affected special tax liability is amended in this document to refer as well to an obligation to register during the 3-year tax suspension period. Similarly, if a regulation prescribes the time for payment of a special tax, the regulation is amended to prescribe the same time for registration during the suspension period. Regulations affording exemptions from payment of special tax (such as the exemptions from liquor dealer tax on sales, by alcohol beverage manufacturers, of products stored on their manufacturing premises) are amended to add similar exemptions from registration during the tax suspension period.

Regulations providing a penalty for failure to file a special tax return or to pay special tax cannot simply be amended to provide the same penalties for failure to register during the tax suspension period, because the penalties described in those regulations are based on the amount of tax, which will become zero in the suspension period. This does not mean that no penalty exists for failure to register during the suspension period. Section 5603(b) of the IRC (26 U.S.C. 5603(b)) provides criminal penalties applicable to persons who are ''required by this chapter * * * or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document'' and who neglect to do so. A penalty of ''not more than $1,000'' or imprisonment for ''not more than 1 year'' or both may be imposed for each offense. Therefore, except in the case of part 17 of the TTB regulations as discussed below, regulations referring to a penalty for failure to file a special tax return are amended to refer to the penalty prescribed in section 5603(b), with respect to a failure to register during the tax suspension period.

While the regulations are not being amended to reflect other enforcement actions available to TTB in the event the required records are not maintained, TTB reminds holders of basic permits that these permits are conditioned on compliance with all Federal law relating to alcohol. The conditions include compliance with the internal revenue laws relating to alcohol, which include the requirement to register and/or maintain the required records.

The TTB regulations in 27 CFR part 17, which deal with manufacturers of nonbeverage products, require special treatment in several respects. For such manufacturers, payment of special tax is not a prerequisite for engaging in business, but is a prerequisite for claiming drawback of excise tax on distilled spirits used in their manufacturing processes. Accordingly,

their time limit for filing a tax return and paying special tax is set by the regulations as no later than completion of final action on the first claim for any tax year. Failure to comply with this time limit is a violation subject to a $1,000 civil penalty prescribed by 26 U.S.C. 5134(c)(2). The same time limit and civil penalty will apply to registration during the suspension period. However, for changes of business location, and succession to business ownership by any of the statutorily privileged successors (such as children succeeding deceased parents, etc.), current regulations in 27 CFR 17.61 and 17.71 require payment of a new special tax if notice of the change is not submitted within 90 days. During the suspension period, when the rate of special tax is zero, the requirement for a new special tax is not applicable. Therefore, manufacturers changing location and successors assuming ownership may submit notice of the change, without penalty under 26 U.S.C. 5134(c)(2), at any time prior to completion of final action on the first claim after the change, or within 90 days of the change, whichever is later.

Certain changes are needed to reflect the fact that TTB will not issue special tax stamps for occupations whose tax rate is zero during the suspension period. Specifically, regulations promising issuance of special tax stamps or requiring persons to obtain such stamps are amended to indicate that no stamps will be issued during the suspension period. Regulations referring to the holding of a special tax stamp at a location are amended to refer, for purposes of the suspension period, to registration for that location. Regulations on changes of address, which refer to the address stated on the special tax stamp, are amended to refer, during the suspension period, to the same address as stated on the special tax return (TTB Form 5630.5). Regulations requiring submission of special tax stamps for endorsement of changes in name or address are amended to waive this requirement during the suspension period (nevertheless, such changes still must be registered by submission of a new special tax return). Lastly, the regulation in 27 CFR 31.125, which indirectly prohibits an activity (retailing of alcohol beverages on board a non-passenger train, vessel, or aircraft) by stating that no special tax stamp will be issued is amended to express the prohibition directly, so that it will be as meaningful during the suspension period as at other times. (**Note:** On April 15, 2005, part 194 of the TTB regulations (27 CFR part 194) was recodified as part 31 (27 CFR part 31); see T.D. TTB–25, 70 FR 19880.)

The current law restricting purchases of distilled spirits by dealers is in 26 U.S.C. 5117, and the implementing regulations are contained in 27 CFR 31.211. Under the amendments made by section 246 of the Act, as described above, during the tax suspension period, section 5117 only authorizes such purchases from persons required to keep records as wholesale liquor dealers—except that limited retail dealers as defined in 26 U.S.C. 5122(c) will be permitted, as currently, to purchase distilled spirits from retail liquor dealers. In addition, amended section 5117 allows the Secretary of the Treasury to expand, by regulation, the categories of persons from whom such distilled spirits purchases may be made. Accordingly, this Treasury decision amends § 31.211 to provide that, during the suspension period, a dealer must purchase distilled spirits from (a) a wholesale dealer (including a State, a political subdivision of a State, the District of Columbia, and a distilled spirits plant) required to keep records as such under part 31, (b) a retail liquor store operated by a State, a political subdivision thereof, or the District of Columbia, or (c) a person not required to register as a wholesale liquor dealer under part 31. The current provision allowing limited retail dealers to purchase distilled spirits from retail liquor dealers is retained.

Finally, in sections or paragraphs where the full regulatory text is set forth in this document, the amendments made by this document include a few minor, nonsubstantive editorial changes, such as the correction of typographical errors.

Public Participation

For submitting comments, please refer to the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not necessary.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The collections of information contained in the regulations amended by this temporary rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)) under control numbers 1513–0005, 1513–0088, 1513–0112, and 1513–0113. There is no new or revised collection of information imposed by this Treasury decision, and there is no change in the reporting or recordkeeping burden so no new control numbers are necessary and the previous control numbers will continue to be used.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

It has been determined that prior notice and comment procedures are not required pursuant to 5 U.S.C. 553(b)(A), and a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2).

Drafting Information

The principal drafter of this document is Steve Simon of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds

transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic fund transfers, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 31

Alcohol and alcoholic beverages, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Amendments to the Regulations

■ For the reasons discussed in the preamble TTB amends 27 CFR parts 17, 19, 24, 25, 26, 27, and 31 as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

■ 1. The authority citation for part 17 is revised to read as follows:

Authority: 26 U.S.C. 5010, 5131–5134, 5143, 5146, 5148, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 17.21 is amended by designating the existing text as paragraph (a), adding the heading ''*General.*'' to newly designated paragraph (a), removing the word ''Each'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, each'', and adding a new paragraph (b) to read as follows:

§ 17.21 Payment of special tax.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. Accordingly, payment of the tax is not a prerequisite for claiming drawback on spirits used during that period. However, the drawback claimant still must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero.

§ 17.22 [Amended]

■ 3. Section 17.22 is amended by adding at the end before the period the words '', except that the tax rate is zero during the suspension period described in § 17.21(b)''.

§ 17.23 [Amended]

■ 4. Section 17.23 is amended at the beginning by removing the word ''A'' and adding, in its place, the words ''Subject to § 17.21(b), a''.

■ 5. Section 17.24 is amended by designating the existing text as paragraph (a), adding the heading ''*General.*'' to newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 17.24 Time for payment of special tax.

* * * * *

(b) *Suspension of tax.* The rate of special tax is zero during the period from July 1, 2005, through June 30, 2008 (see § 17.21(b)). During this period, the registration requirement continues. The drawback claimant must register by filing a special tax return, Form 5630.5. The claimant may register without penalty under 26 U.S.C. 5134(c) at any time prior to completion of final action on the first claim submitted for each tax year.

§ 17.31 [Amended]

■ 6. Section 17.31 is amended by adding at the end of the first sentence before the period the words '', and the filing of a return is required for registration purposes even though no tax is due during the suspension period described in § 17.21(b)''.

■ 7. Section 17.32 is amended by adding at the end of paragraph (a)(5) before the period the words ''or to which the return relates during the suspension period described in § 17.21(b)'' and revising paragraph (b) to read as follows:

§ 17.32 Completion of ATF Form 5630.5.

* * * * *

(b) *Multiple locations.* A taxpayer subject to special tax, or required to register during the suspension period described in § 17.21(b), for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, Form 5630.5, with payment of applicable tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on the Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid, or for which registration is being made during the suspension period described in § 17.21(b). The original of the list shall be filed in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 17.170.

* * * * *

■ 8. Section 17.51 is amended:

■ a. By designating the existing text as paragraph (a);

■ b. In the first sentence of newly designated paragraph (a), by removing the word ''Each'' and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, each'';

■ c. Also in the first sentence of newly designated paragraph (a), by adding after the words ''payment in the'' the word ''applicable''; and

■ d. By adding a new paragraph (b) to read as follows:

§ 17.51 Issuance of stamps.

* * * * *

(b) During the suspension period described in § 17.21(b) when registration is required but no tax is due, a special tax stamp will not be issued.

■ 9. Section § 17.61 is revised to read as follows:

§ 17.61 General.

A manufacturer who, during a tax year for which a special tax return has been filed with payment of any tax due, moves its place of manufacture to a place other than that specified on the return, shall register the change, by executing a new return on Form 5630.5, designated as ''Amended Return.'' This Amended Return shall set forth the time of the move and the address of the new location. If a special tax stamp was issued for the former location, the taxpayer shall also submit the special tax stamp for endorsement of the change in location. In general, the taxpayer must submit the new return and the

special tax stamp within 90 days after the move to the new premises. However, if the move occurs during the suspension period described in § 17.21(b) when no tax was due and no special tax stamp was issued, the taxpayer may submit the new return alone without penalty at any time prior to completion of final action on the first claim covering use of spirits at the new premises, or within 90 days of the move, whichever is later.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 [Amended]

■ 10. Section 17.62 is amended at the beginning by removing the word ''A'' and adding, in its place, the words ''Except in the case of claims covering spirits used during the suspension period described in § 17.21(b) when the special tax rate is zero, a''.

■ 11. Section 17.71 is amended by designating the existing text as paragraph (a) and revising the first sentence of newly designated paragraph (a) and adding a new paragraph (b) to read as follows:

§ 17.71 General.

(a) Subject to paragraph (b) of this section, certain persons may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid, or for which registration was made during the suspension period described in § 17.21(b). * * *

* * * * *

(b) With respect to spirits used during the suspension period described in § 17.21(b), the successor or successors must file the return prior to completion of final action on the claim(s) covering such spirits, or within 90 days of the change in control, whichever is later.

§ 17.73 [Amended]

■ 12. Section 17.73 is amended at the beginning by removing the word ''A'' and adding, in its place, the words ''Except in the case of claims covering spirits used during the suspension period described in § 17.21(b) when the special tax rate is zero, a''.

■ 13. Section 17.75 is revised to read as follows:

§ 17.75 Formation of partnership or corporation.

If one or more persons who have filed a special tax return and paid any tax due form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall file a new special tax return and pay a new special tax in order to be eligible to receive drawback. In the case of claims covering spirits used during the suspension period described in § 17.21(b), the rate of special tax is zero.

■ 14. Section 17.76 is revised to read as follows:

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to the filing of a special tax return, admits one or more new general partners, the new partnership shall file a new special tax return and pay a new special tax in order to be eligible to receive drawback (in the case of claims covering spirits used during the suspension period described in § 17.21(b), the rate of special tax is zero). Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax or that require the filing of a new special tax return.

■ 15. Section 17.77 is revised to read as follows:

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have filed a special tax return and paid any tax due, the new corporation must file a new special tax return, pay special tax, and obtain a special tax stamp in its own name. However, in the case of spirits used during the suspension period described in § 17.21(b) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

§ 17.81 [Amended]

■ 16. Section 17.81 is amended by removing the words ''paid special tax'' and adding, in their place, the words ''filed a special tax return and paid any tax due'' and by adding, after the words ''required to'', the words ''file a new special tax return or''.

§ 17.82 [Amended]

■ 17. Section 17.82 is amended by removing the word ''is'' and adding, in its place, the words ''return and tax payment are''.

§ 17.83 [Amended]

■ 18. Section 17.83 is amended by removing the word ''is'' and adding, in its place, the words ''return and tax payment are''.

PART 19—DISTILLED SPIRITS PLANTS

■ 19. The authority citation for part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 20. Section 19.49 is amended by adding a new paragraph (a)(3) and revising paragraphs (b)(2) and (c) to read as follows:

§ 19.49 Liability for special tax.

(a) * * *

(3) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a)(1) of this section is zero. However, each proprietor still must register by filing the special tax return on Form 5630.5 during this suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

(b) * * *

(2) *Exemption for sales by a proprietor of a distilled spirits plant.* A proprietor of a distilled spirits plant is not required to pay special tax, or to register during the suspension period described in paragraph (a)(3) of this section, as a wholesale or retail dealer in liquor because of sales, at the principal place of business or at the distilled spirits plant, of liquor which at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a taxpaid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant shall have only one exemption from dealer's special tax, or from dealer's registration, for each distilled spirits plant. The distiller may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax or registration; otherwise, the exemption will apply to the distilled spirits plant.

(c) *Each place of business taxable—*(1) *General.* A proprietor of a distilled spirits plant incurs special tax liability, or an obligation to register during the suspension period described in paragraph (a)(3) of this section, at each

place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(2) *Exception for contiguous areas.* A proprietor of a distilled spirits plant does not incur additional special tax liability, or an obligation to register during the suspension period described in paragraph (a)(3) of this section, for sales of liquor made at a location other than on distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is contiguous to the distilled spirits plant premises in the manner described in paragraph (c)(1) of this section.

* * * * *

§ 19.50 [Amended]

■ 21. Section 19.50 is amended:

■ a. In paragraph (a), by adding at the end the following new sentence: ''However, under 26 U.S.C. 5148(a) the tax rate is zero during the suspension period described in § 19.49(a)(3).''; and

■ b. At the beginning of paragraph (b), by removing the word ''Title'' and adding, in its place, the words ''Except during the suspension period described in § 19.49(a)(3) when the tax rate is zero, title''.

■ 22. Section 19.51 is amended by revising paragraphs (a), (b)(5), and (c) to read as follows:

§ 19.51 Special tax returns.

(a) *General.* Special tax shall be paid by return, and the filing of a return is required for registration purposes even though no tax is due during the suspension period described in § 19.49(a)(3). The prescribed return is Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of applicable tax, shall be filed in accordance with instructions on the form.

(b) * * *

(5) The class(es) of special tax to which the taxpayer is subject or to which the return relates during the suspension period described in § 19.49(a)(3).

* * * * *

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax, or required to register during the suspension period described in § 19.49(a)(3), for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, Form 5630.5, with payment of applicable tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid, or for which registration is being made during the suspension period described in § 19.49(a)(3). The original of the list shall be filed in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 19.723(c).

* * * * *

■ 23. Section 19.53 is amended by revising paragraph (a) to read as follows:

§ 19.53 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, upon filing a properly executed return on Form 5630.5, together with the applicable full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 19.51(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(2) *Exception for suspension period.* During the suspension period described in § 19.49(a)(3) when registration is required but no tax is due, a special tax stamp will not be issued.

* * * * *

■ 24. Section 19.54 is amended by adding at the end of the third sentence of paragraph (a) before the period the words, ''except if the change occurs during the suspension period described in § 19.49(a)(3)'' and revising paragraphs (b) and (d) to read as follows:

§ 19.54 Changes in special tax stamps.

* * * * *

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a distilled spirits plant, the successor shall file a new special tax return, pay a new special tax, and obtain the required special tax stamps. However, if the change in proprietorship occurs during the suspension period described in § 19.49(a)(3) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid (or for which registration was made during the suspension period described in § 19.49(a)(3)), without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on Form 5630.5, which shows the basis of succession. Except during the suspension period described in § 19.49(a)(3), a person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

* * * * *

(d) *Change in location.* (1) Subject to paragraph (d)(2) of this section, if there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to file a new special tax return, pay a new special tax, and obtain a new special tax stamp.

(2) If the change in location occurs during the suspension period described in § 19.49(a)(3) when no tax is due and no special tax stamp is issued, the requirements of paragraph (d)(1) of this section still apply, except with regard to attachment of a special tax stamp and payment of a new special tax. During the suspension period, a failure to comply with paragraph (d)(1) of this section may result in a penalty under 26 U.S.C. 5603(b).

* * * * *

§ 19.906 [Amended]

■ 25. Section 19.906 is amended by adding at the end of paragraph (a) before

the period the words ''except during the suspension period described in § 19.49(a)(3) when special tax stamps are not issued''.

PART 24—WINE

■ 26. The authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5148, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 27. In § 24.50:
■ a. The first sentence of paragraph (a) is amended by removing the word ''Every'' and adding, in its place, the words ''Except as otherwise provided in paragraph (c) of this section, every'';
■ b. The first sentence of paragraph (b) is amended by removing the word ''Proprietors'' and adding, in its place, the words ''Subject to paragraph (c) of this section, proprietors'';
■ c. A new paragraph (c) is added to read as follows;
■ d. An authority citation is added following new paragraph (c); and
■ e. The OMB control numbers at the end of the section are revised to read as follows:

§ 24.50 Payment of special (occupational) tax.

* * * * *

(c) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, the proprietor must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

(26 U.S.C. 5081, 5142, 5143)

(Approved by the Office of Management and Budget under control numbers 1513–0088 and 1513–0113)

§ 24.51 [Amended]

■ 28. In § 24.51:
■ a. Paragraph (a) is amended by adding at the end the following new sentence: ''However, under 26 U.S.C. 5148(a), the tax rate is zero during the suspension period described in § 24.50(c).''; and
■ b. The first sentence of paragraph (b) is amended by removing the word ''Title'' and adding, in its place, the words ''Except during the suspension period described in § 24.50(c) when the tax rate is zero, title''.

§ 24.52 [Amended]

■ 29. Section 24.52 is amended:
■ a. In the first sentence of paragraph (a), by adding after the words ''special (occupational) tax'', the words '', or to register during the suspension period described in § 24.50(c),'';
■ b. In the second sentence of paragraph (a), by adding after the words ''special (occupational) tax'' the words ''or registration'';
■ c. In the second sentence of paragraph (b), by adding after the words ''special (occupational) tax'' the words ''or from registration'';
■ d. In the third sentence of paragraph (b), by adding after the words ''tax will be paid'' the words, ''or registration will be made during the suspension period described in § 24.50(c),'';
■ e. In paragraph (c), by adding after the words ''has not paid special (occupational) tax'' the words, ''or has not registered during the suspension period described in § 24.50(c),'';
■ f. Also in paragraph (c), by adding after the words ''required to pay special (occupational) tax'' the words, ''or to register during that suspension period,'';
■ g. In paragraph (d), by adding after the words ''the appropriate special (occupational) tax'' the words, ''or who has registered during the suspension period described in § 24.50(c),''; and
■ h. Also in paragraph (d), by adding after the words ''to pay special (occupational) tax'' the words ''or register''.

§ 24.53 [Amended]

■ 30. Section 24.53 is amended:
■ a. In paragraph (a), by adding at the end the following new sentence: ''During the suspension period described in § 24.50(c), an annual return is required even though no tax is due.'';
■ b. In paragraph (b)(5), by adding at the end before the period the words ''or to which the return relates during the suspension period described in § 24.50(c)'';
■ c. In the introductory text of paragraph (c), by adding after the words ''special (occupational) tax'' the words ''(or required to register during the suspension period described in § 24.50(c))'';
■ d. In paragraph (c)(1), by adding after the words ''payment of'' the word ''applicable''; and
■ e. In paragraph (c)(2), by adding at the end of the second sentence before the period the words ''or for which registration is being made during the suspension period described in § 24.50(c)''.
■ 31. Section 24.54 is amended by revising paragraph (a) to read as follows:

§ 24.54 Special (occupational) tax stamps.

(a) *Issuance of special (occupational) tax stamps*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, upon filing a properly executed return on Form 5630.5, together with the applicable full remittance, the taxpayer will be issued an appropriately designated special (occupational) tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 24.53(c), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in case of a corporate taxpayer).

(2) *Exception for suspension period.* During the suspension period described in § 24.50(c) when registration is required but no tax is due, a special tax stamp will not be issued.

* * * * *

■ 32. Section 24.55 is amended by adding at the end of the last sentence of paragraph (a) before the period the words, '', except if the change occurs during the suspension period described in § 24.50(c)'' and revising paragraphs (b) and (d) and the OMB control numbers at the end of the section, and adding an authority citation for the section before the OMB control numbers to read as follows:

§ 24.55 Changes in special (occupational) tax stamps.

* * * * *

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of a bonded wine premises or taxpaid wine bottling house, the successor shall file a new special tax return, pay a new special (occupational) tax, and obtain the required special (occupational) tax stamps. However, if the change in proprietorship occurs during the suspension period described in § 24.50(c) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special (occupational) tax was paid (or for which registration was made during the suspension period described in § 24.50(c)), without paying a new special (occupational) tax, if within 30

days after the date on which the successor begins to carry on the business, the successor files a special (occupational) tax return on Form 5630.5, which shows the basis of succession. Except during the suspension period described in § 24.50(c), a person who is a successor to a business for which special (occupational) tax has been paid and who fails to register the succession is liable for special (occupational) tax computed from the first day of the calendar month in which he or she began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

* * * * *

(d) *Change in location.* (1) Subject to paragraph (d)(2) of this section, if there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file an amended special (occupational) tax return covering the new location. The proprietor shall attach the special (occupational) tax stamp or stamps for endorsement of the change in location. No new special (occupational) tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to file a new special (occupational) tax return, pay a new special (occupational) tax, and obtain a new special (occupational) tax stamp.

(2) If the change in location occurs during the suspension period described in § 24.50(c) when no tax is due and no special (occupational) tax stamp is issued, the requirements of paragraph (d)(1) of this section still apply, except with regard to attachment of a special (occupational) tax stamp and payment of a new special (occupational) tax. During the suspension period, a failure to comply with paragraph (d)(1) of this section may result in a penalty under 26 U.S.C. 5603(b).

(26 U.S.C. 5143, 7011)

(Approved by the Office of Management and Budget under control numbers 1513–0088 and 1513–0113)

PART 25—BEER

■ 33. The authority citation for part 25 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5148, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 34. Section 25.111 is amended:

■ a. At the beginning of paragraph (a), by removing the word ''Every'' and adding, in its place, the words ''Except as otherwise provided in paragraph (c) of this section, every''; and

■ b. By adding a new paragraph (c) before the authority citation to read as follows:

§ 25.111 Brewer's special tax.

* * * * *

(c) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, the proprietor must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

* * * * *

§ 25.111a [Amended]

■ 35. Section 25.111a is amended by adding at the end of paragraph (b) before the period the words '', except that the tax rate is zero during the suspension period described in § 25.111(c).''

§ 25.111b [Amended]

■ 36. Section 25.111b is amended by adding at the end of the second sentence of paragraph (a) before the period the words '', except that the tax rate is zero during the suspension period described in § 25.111(c)''.

§ 25.113 [Amended]

■ 37. In § 25.113:

■ a. The first sentence of paragraph (a) is amended by removing the word ''at'' and adding, in its place, the words '', or must register by filing the special tax return during the suspension period described in § 25.111(c), for''; and

■ b. Paragraph (b) is amended by adding after the word ''liability'' the words ''(or will not have to register during the suspension period described in § 25.111(c))''.

§ 25.114 [Amended]

■ 38. In § 25.114:

■ a. The first sentence of paragraph (a) is amended by adding after the words ''special tax'' the words ''or to register during the suspension period described in § 25.111(c),'';

■ b. The second sentence of paragraph (a) is amended by adding after the words ''dealer's special tax'' the words ''or registration'';

■ c. The last sentence of paragraph (a) is amended by adding after the words ''dealer's special tax'' the words ''or registration'';

■ d. Paragraph (b) is amended by adding after the words ''appropriate special tax'' the words '', or who has registered during the suspension period described in § 25.111(c),''; and

■ e. Paragraph (b) is further amended by adding after the words ''pay special tax'' the words ''or register''.

§ 25.117 [Amended]

■ 39. Section 25.117 is amended by adding at the end of the first sentence before the period the words '', and a return is required during the suspension period described in § 25.111(c) even though no tax is due'' and adding in the third sentence after the words ''payment of'' the word ''applicable''.

§ 25.118 [Amended]

■ 40. Section 25.118 is amended by adding at the end of paragraph (e) before the period the words ''or to which the return relates during the suspension period described in § 25.111(c)''.

§ 25.119 [Amended]

■ 41. In § 25.119:

■ a. The introductory text is amended by adding after the words ''subject to special tax'' the words ''(or required to register during the suspension period described in § 25.111(c))''

■ b. Paragraph (a) is amended by adding after the words ''payment of'' the word ''applicable''; and

■ c. The second sentence of paragraph (b) is amended by adding after the words ''special tax is being paid'' the words ''or for which registration is being made during the suspension period described in § 25.111(c)''.

■ 42. Section 25.125 is amended:

■ a. By designating the existing text as paragraph (a);

■ b. In the first sentence of newly designated paragraph (a), by removing the word ''Upon'' and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, upon'';

■ c. Also in the first sentence of newly designated paragraph (a), by adding after the words ''together with the'' the word ''applicable''; and

■ d. By adding a new paragraph (b) before the section authority citation to read as follows:

§ 25.125 Issuance of special tax stamps.

* * * * *

(b) During the suspension period described in § 25.111(c) when registration is required but no tax is due, a special tax stamp will not be issued.

* * * * *

§ 25.131 [Amended]

■ 43. Section 25.131 is amended by adding at the end of the last sentence before the period the words ‘‘, except if the change occurs during the suspension period described in § 25.111(c)’’.

■ 44. Section 25.132 is revised to read as follows:

§ 25.132 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a brewery, the successor shall file a new special tax return, pay a new special tax, and obtain the required special tax stamps. However, if the change in proprietorship occurs during the suspension period described in § 25.111(c) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

(b) *Exemption for certain successors.* Persons having the right of succession provided for in § 25.133 may carry on the business for the remainder of the period for which the special tax was paid (or for which registration was made during the suspension period described in § 25.111(c)), if within 30 days after the date on which the successor begins to carry on the business, the successor files a return on Form 5630.5, which shows the basis of succession. Except during the suspension period described in § 25.111(c), a person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85–859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

■ 45. Section 25.134 is revised to read as follows:

§ 25.134 Change in location.

(a) Subject to paragraph (b) of this section, if there is a change in location of a taxable place of business, the brewer shall, within 30 days after the change, file an amended special tax return covering the new location. The brewer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the brewer does not file the amended return within 30 days, the brewer is required to file a new special tax return, pay a new special tax, and obtain a new special tax stamp.

(b) If the change in location occurs during the suspension period described in § 25.111(c) when no tax is due and no special tax stamp is issued, the requirements of paragraph (a) of this section still apply, except with regard to attachment of a special tax stamp and payment of a new special tax. During the suspension period, a failure to comply with paragraph (a) of this section may result in a penalty under 26 U.S.C. 5603(b). (26 U.S.C. 5143, 7011)

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 46. The authority citation for part 26 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5148, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 47. Section 26.44 is amended by designating the existing text as paragraph (a), adding the heading ‘‘*General.*’’ to newly designated paragraph (a), removing the word ‘‘Every’’ at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ‘‘Except as otherwise provided in paragraph (b) of this section, every’’, and adding a new paragraph (b) before the section authority citation to read as follows:

§ 26.44 Liquor dealer's special taxes.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, every person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 31 of this chapter, during the suspension period even though the amount of tax due is zero.

* * * * *

■ 48. Section 26.45 is revised to read as follows:

§ 26.45 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, except during the suspension period described in § 26.44(b), every person bringing distilled spirits into the United States from Puerto Rico, who sells, or offers for sale, warehouse receipts for distilled spirits stored in warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where such warehouse receipts are sold, or offered for sale, and must file return and pay occupational tax as provided in § 26.44(a). During the suspension period, every such person must register as provided in § 26.44(b).

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)

■ 49. Section 26.46 is amended by designating the existing text as paragraph (a), adding the heading ‘‘*General.*’’ to newly designated paragraph (a), removing the word ‘‘Every’’ at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ‘‘Except as otherwise provided in paragraph (b) of this section, every’’, and adding a new paragraph (b) before the section authority citation to read as follows:

§ 26.46 Distilled spirits plant proprietor's special (occupational) tax.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, every person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 19 of this chapter, during the suspension period even though the amount of tax due is zero.

* * * * *

■ 50. Section 26.171 is amended by designating the existing text as paragraph (a), adding the heading ‘‘*General.*’’ to newly designated paragraph (a), removing the word ‘‘Any’’ at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ‘‘Except as otherwise provided in paragraph (b) of this section, any’’, and adding a new paragraph (b) to read as follows:

§ 26.171 Special tax.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, any person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 17 of this chapter, during the suspension period even though the amount of tax due is zero.

■ 51. Section 26.210 is amended by designating the existing text as paragraph (a), adding the heading ‘‘*General.*’’ to newly designated paragraph (a), removing the word

''Every'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, every'', and adding a new paragraph (b) before the section authority citation to read as follows:

§ 26.210 Liquor dealer's special taxes.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, every person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 31 of this chapter, during the suspension period even though the amount of tax due is zero.

* * * * *

■ 52. Section 26.211 is revised to read as follows:

§ 26.211 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, except during the suspension period described in § 26.210(b), every person bringing distilled spirits into the United States from the Virgin Islands, who sells, or offers for sale, warehouse receipts for distilled spirits stored in warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where such warehouse receipts are sold, or offered for sale, and must file return and pay occupational tax as provided in § 26.210(a). During the suspension period, every such person must register as provided in § 26.210(b).

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)

■ 53. Section 26.307 is amended by designating the existing text as paragraph (a), adding the heading ''*General.*'' to newly designated paragraph (a), removing the word ''Any'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, any'', and adding a new paragraph (b) to read as follows:

§ 26.307 Special tax.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, any person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 17 of this chapter, during the suspension period even though the amount of tax due is zero.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 54. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5148, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

■ 55. Section 27.30 is amended by designating the existing text as paragraph (a), adding the heading ''*General.*'' to newly designated paragraph (a), removing the word ''Importers'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, importers'', and adding a new paragraph (b) before the section authority citation to read as follows:

§ 27.30 Special (occupational) tax.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, the persons described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 31 of this chapter, during the suspension period even though the amount of tax due is zero.

* * * * *

■ 56. Section 27.31 is revised to read as follows:

§ 27.31 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, except during the suspension period described in § 27.30(b), every person engaged in business as an importer of distilled spirits, who sells, or offers for sale, warehouse receipts for distilled spirits stored in customs bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where the warehouse receipts are sold or offered for sale, and must file return and pay occupational tax as provided in § 27.30(a). During the suspension period, every such person must register as provided in § 27.30(b).

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)

PART 31—ALCOHOL BEVERAGE DEALERS

■ 57. The authority citation for part 31 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111'5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5148, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

■ 58. Section 31.21 is amended by designating the existing text as paragraph (a), adding the heading ''*General.*'' to newly designated paragraph (a), removing the word ''Special'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, special'', and adding a new paragraph (b) before the section authority citation to read as follows:

§ 31.21 Basis of tax.

* * * * *

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, liquor dealers must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

* * * * *

■ 59. Section 31.23 is revised to read as follows:

§ 31.23 Retail dealer in liquors.

(a) *General.* Every person who sells or offers for sale distilled spirits, wines, or beer to any person other than a dealer is, except as provided in paragraph (b) of this section, a retail dealer in liquors. Except during the suspension period described in § 31.21(b), every retail dealer in liquors shall pay special tax at the rate specified in § 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the suspension period described in § 31.21(b) when no tax is due, the dealer must register by filing the special tax return, Form 5630.5.

(b) *Persons not deemed to be retail dealers in liquors.* The following persons are not deemed to be retail dealers in liquors within the meaning of 26 U.S.C. chapter 51, and are not required to pay special tax (or to register

during the suspension period described in § 31.21(b)) as such dealer:

(1) A retail dealer in beer as defined in § 31.25,

(2) A limited retail dealer as specified in § 31.27, or

(3) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in § 31.188 through § 31.190 or § 31.191(a).

(c) *Persons exempt from special tax.* The following persons are exempt from special tax (and from registration during the suspension period described in § 31.21(b)) as retail dealers in liquors:

(1) A wholesale dealer in liquors selling or offering for sale distilled spirits, wines, or beer, whether to dealers or persons other than dealers, at any place where such wholesale dealer in liquors is required to pay special tax (or to register during the suspension period described in § 31.21(b)) as such dealer.

(2) A wholesale dealer in beer selling or offering for sale beer only, whether to dealers or persons other than dealers, at any place where such wholesale dealer in beer is required to pay special tax (or to register during the suspension period described in § 31.21(b)) as such dealer, or

(3) A person who is exempt from special tax under the provisions of §§ 31.181–31.184, 31.187, or 31.187a.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5113, 5121, 5122)

■ 60. Section 31.24 is revised to read as follows:

§ 31.24 Wholesale dealer in liquors.

(a) *General.* Every person who sells or offers for sale distilled spirits, wines, or beer to another dealer is, except as provided in paragraph (b) of this section, a wholesale dealer in liquors. Except during the suspension period described in § 31.21(b), every wholesale dealer in liquors is required to pay special tax at the rate specified in § 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the suspension period when no tax is due, the dealer must register by filing the special tax return, Form 5630.5, in accordance with § 31.21(b).

(b) *Persons not deemed to be wholesale dealers in liquors.* The following persons are not deemed to be wholesale dealers in liquors within the meaning of 26 U.S.C. chapter 51, and are not required to pay special tax (or to register during the suspension period described in § 31.21(b)) as such dealer:

(1) A wholesale dealer in beer as defined in § 31.26,

(2) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in §§ 31.188 through 31.190 or § 31.192, or

(3) A person returning liquors for credit, refund, or exchange as provided in § 31.193.

(c) *Persons exempt from special tax.* (1) The following persons are exempt from special tax (and from registration during the suspension period described in § 31.21(b)) as wholesale dealers in liquors:

(i) A retail dealer in liquors who consummates sales of distilled spirits, beer or wine, or any combination thereof, to a limited retail dealer at the place where such retail dealer in liquors has paid the special tax (or has registered during the suspension period described in § 31.21(b)) as such dealer for the current tax year,

(ii) A retail dealer in beer who, having paid the special tax (or having registered during the suspension period described in § 31.21(b)) as such dealer for the current tax year, consummates sales at his place of business of beer to a limited retail dealer, or

(iii) A person who is exempt from such tax under the provisions of §§ 31.181 through 31.184.

(2) A wholesale dealer in liquors who has paid the special tax (or has registered during the suspension period described in § 31.21(b)) as such dealer at the place or places from which he conducts his selling operations is exempt from additional special tax (or from additional registration during the suspension period described in § 31.21(b)) on account of his sales of beer or wines to other dealers at the places of business of such dealers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended, 1344, as amended; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5111, 5112, 5113, 5123))

■ 61. Section 31.25 is revised to read as follows:

§ 31.25 Retail dealer in beer.

(a) *General.* Every person who sells or offers for sale beer, but not distilled spirits or wines, to any person other than a dealer is, except as provided in paragraph (b) of this section, a retail dealer in beer. Except during the suspension period described in § 31.21(b), every retail dealer in beer shall pay special tax at the rate specified in § 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the suspension period when no tax is due, the dealer must register by filing the special tax return, Form 5630.5, in accordance with § 31.21(b).

(b) *Persons not deemed to be retail dealers in beer.* The following persons are not deemed to be retail dealers in beer within the meaning of 26 U.S.C. chapter 51, and are not required to pay a special tax (or to register during the suspension period described in § 31.21(b)) as such dealer:

(1) A limited retail dealer as specified in § 31.27, or

(2) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in § 31.188 through § 31.189 or § 31.191(a).

(c) *Persons exempt from special tax.* The following persons are exempt from special tax (and from registration during the suspension period described in § 31.21(b)) as retail dealers in beer:

(1) A wholesale dealer in beer selling or offering for sale beer, but not distilled spirits or wines, whether to dealers or persons other than dealers, at any place where such wholesale dealer in beer is required to pay special tax (or to register during the suspension period described in § 31.21(b)) as such dealer.

(2) A person who is exempt from special tax under the provisions of §§ 31.181, 31.184, 31,187, or 31.187a.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5113, 5121, 5122)

■ 62. Section 31.26 is revised to read as follows:

§ 31.26 Wholesale dealer in beer.

(a) *General.* Every person who sells or offers for sale beer, but not distilled spirits or wines, to another dealer is, except as provided in paragraph (b) of this section, a wholesale dealer in beer. Except during the suspension period described in § 31.21(b), every wholesale dealer in beer is required to pay special tax at the rate specified in § 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the suspension period when no tax is due, the dealer must register by filing the special tax return, Form 5630.5, in accordance with § 31.21(b).

(b) *Persons not deemed to be wholesale dealers in beer.* The following persons are not deemed to be wholesale dealers in beer within the meaning of 26 U.S.C. chapter 51, and are not required to pay special tax (or to register during the suspension period described in § 31.21(b)) as such dealer:

(1) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in § 31.188 through § 31.189 or § 31.192, or

(2) A person returning beer for credit, refund or exchange as provided in § 31.193.

(c) *Persons exempt from special tax.* (1) The following persons are exempt from special tax (and from registration during the suspension period described in § 31.21(b)) as wholesale dealers in beer:

(i) A retail dealer in liquors who consummates sales of distilled spirits, beer or wine, or any combination thereof, to a limited retail dealer at the place where such retail dealer in liquors has paid the special tax (or has registered during the suspension period described in § 31.21(b)) as such dealer for the current tax year,

(ii) A retail dealer in beer who consummates sales of beer to a limited dealer at the place where such retail dealer in beer has paid the special tax (or has registered during the suspension period described in § 31.21(b)) as such dealer for the current tax year, or

(iii) A person who is exempt from such tax under the provisions of §§ 31.181 and 31.184.

(2) A wholesale dealer in beer who has paid the special tax (or has registered during the suspension period described in § 31.21(b)) as such dealer at the place, or places, from which he conducts his selling operations is exempt from additional special tax (or from additional registration during the suspension period described in § 31.21(b)) on account of his sales of beer to other dealers at the places of business of such dealers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended, 1344, as amended; sec. 1905, Pub. L. 94–455, 90 Stat. 1819 (26 U.S.C. 5111, 5112, 5113, 5123))

■ 63. Section 31.29 is revised to read as follows:

§ 31.29 Clubs or similar organizations.

(a) Subject to paragraph (b) of this section, a club or similar organization shall pay special tax (or register during the suspension period as provided in § 31.21(b)) if such club or organization:

(1) Furnishes liquors to members under conditions constituting sale (including the acceptance of orders therefor, furnishing the liquors ordered and collecting the price thereof); or

(2) Conducts a bar for the sale of liquors on the occasion of an outing, picnic, or other entertainment, unless the club is a ''limited retail dealer'' under § 31.27 (the special tax stamp or registration of the proprietor of the premises where the bar is located will not relieve the club or organization from its own special tax payment or registration); or

(3) Purchases liquors for members without prior agreement concerning payment therefor and such organization subsequently recoups.

(b) Special tax payment or registration is not required if money is collected in advance from members for the purchase of liquors, or money is advanced for purchase of liquors on agreement with the members for reimbursement.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5111, 5121, 5122)

§ 31.30 [Amended]

■ 64. Section 31.30 is amended by adding at the end before the period the words ''or shall register during the suspension period as provided in § 31.21(b)''.

■ 65. Section 31.31 is amended by designating the existing text as paragraph (a), adding the heading ''*General.''* to newly designated paragraph (a), and adding a new paragraph (b) before the section authority citation to read as follows:

§ 31.31 States, political subdivisions thereof, or the District of Columbia.

* * * * *

(b) *Suspension of tax.* During the suspension period described in § 31.21(b) when no tax is due, the States, their political subdivisions, and the District of Columbia must register only once per tax year by filing a special tax return, Form 5630.5, in accordance with § 31.21(b).

* * * * *

§ 31.32 [Amended]

■ 66. Section 31.32 is amended by adding at the end before the period the words ''or shall register during the suspension period as provided in § 31.21(b)''.

§ 31.33 [Amended]

■ 67. In § 31.33:

■ a. Amend the heading of paragraph (a) by removing the word ''liability'; and

■ b. Amend the text of paragraph (a) by removing the word ''liability'' and adding, in its place, the words ''payment (or registration during the suspension period as provided in § 31.21(b))'', and by removing the word ''incurred'' and adding, in its place, the word ''required''.

§ 31.34 [Amended]

■ 68. Section 31.34 is amended by adding after the words ''pay special tax,'' the words ''(or register during the suspension period as provided in § 31.21(b))''.

■ 69. Section 31.35 is revised to read as follows:

§ 31.35 Warehouse receipts covering spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, except during the suspension period described in § 31.21(b), every person who sells or offers for sale warehouse receipts for spirits held or stored in a distilled spirits plant, customs bonded warehouse, or elsewhere, is required to file a special tax return and pay special tax as a wholesale dealer in liquors, or as a retail dealer in liquors, as the case may be, at the place where such warehouse receipts are sold, or offered for sale, unless exempt by the provisions of subpart L of this part. During the suspension period, such persons must register as provided in § 31.21(b).

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

■ 70. Section 31.51 is revised to read as follows:

§ 31.51 Special tax liability incurred at each place of business.

Except as provided in §§ 31.31 and 31.181 through 31.193, payment of special tax (or registration during the suspension period as provided in § 31.21(b)) is required for each and every place where distilled spirits, wines, or beer are sold or offered for sale: *Provided,* That the term ''place'' as used in this section means the entire office, plant or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises shall not be deemed sufficient separation to require the payment of additional special tax (or to require additional registration), if the various divisions are otherwise contiguous.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 31.53 [Amended]

■ 71. The second sentence of § 31.53 is amended by adding after the words ''special tax stamp'' the words ''(or for which he has registered during the suspension period described in § 31.21(b) when no tax is due and no special tax stamp is issued)'' and adding after the words ''exempt from special tax,'' the words ''or registration''.

■ 72. Section 31.54 is revised to read as follows:

§ 31.54 Places of storage; deliveries therefrom.

Special tax is not required to be paid (and registration under § 31.21(b) is not required) for warehouses and similar places which are used by dealers merely

for the storage of liquors and are not places where orders for liquors are accepted. Where orders for liquors are received and duly accepted at a place where the dealer holds the required special tax stamp (or for which the dealer has registered during the suspension period described in § 31.21(b) when no special tax stamp is issued), the subsequent actual delivery of the liquors from a place of storage does not require the payment of special tax (or registration) at such place of storage. Except as provided in §§ 31.185 and 31.186, a dealer holding a special tax stamp (or having registered during the suspension period) at a given place, who makes actual delivery of liquors from a warehouse at another place, without prior constructive delivery by the acceptance of an order therefor at the place covered by the special tax stamp (or by registration during the suspension period), shall pay special tax (or shall register during the suspension period as provided in § 31.21(b)) at the place where ownership of the liquors is transferred.

(72 Stat. 1340, 1347; 26 U.S.C. 5113, 5143)

■ 73. Section 31.55 is revised to read as follows:

§ 31.55 Caterers.

(a) *General.* Where a contract to furnish liquors is made by a caterer at his place of business where he holds a special tax stamp (or for which he has registered during the suspension period described in § 31.21(b)), no payment of special tax (or registration during the suspension period) is required by the serving of the liquors at a different location.

(b) *Additional liability.* Where the contract of a caterer provides for the sale of liquors by the drink at a place, or simultaneously at different places, other than his place of business where he holds a special tax stamp (or for which he has registered during the suspension period described in § 31.21(b)), a separate payment of special tax (or registration during the suspension period) is required for each such place.

(c) *Records.* Caterers must maintain sufficient commercial records to verify that their special (occupational) tax liabilities (or registration obligations during the suspension period described in § 31.21(b)) have been satisfied for all locations at which activities subject to special (occupational) tax or registration occur. These commercial records should indicate the names and addresses of locations at which alcoholic beverages have been sold or offered for sale and the dates and times that such activities occurred. These commercial records must be available to TTB officers upon request.

(26 U.S.C. 5121, 5122, 5143, 5555, 6806, 7011)

§ 31.56 [Amended]

■ 74. In § 31.56, the second sentence is amended by adding after the words ''pay special tax'' the words ''(or to register during the suspension period as provided in § 31.21(b))''.

§ 31.57 [Amended]

■ 75. In § 31.57:

■ a. The first sentence is amended by adding after the word ''stamp'' the words ''(or one registration during the suspension period described in § 31.21(b) when no tax is due and no special tax stamp is issued)''; and

■ b. The second sentence is amended by adding at the end before the period the words '', or shall register only once per tax year during the suspension period in accordance with § 31.21(b)''.

§ 31.58 [Amended]

■ 76. In § 31.58:

■ a. The first sentence is amended by adding at the end before the period the words '', or shall register only once per tax year during the suspension period described in § 31.21(b)'';

■ b. The third sentence is amended by adding at the end before the period the words '', or shall register only once per tax year during the suspension period in accordance with § 31.21(b)''.

§ 31.59 [Amended]

■ 77. In § 31.59:

■ a. The first sentence is amended by adding after the words ''special tax'' the words ''(or shall register only once per tax year during the suspension period described in § 31.21(b))''; and

■ b. The second sentence is amended by adding after the words ''special tax'' the words ''(or shall register only once per tax year during the suspension period in accordance with § 31.21(b))''.

■ 78. Section 31.71 is amended by designating the existing text as paragraph (a), adding the heading ''*General.*'' to newly designated paragraph (a), and adding a new paragraph (b) before the section authority citation to read as follows:

§ 31.71 Different businesses of same ownership and location.

* * * * *

(b) *Suspension of tax.* The person must register for each business during the suspension period as provided in § 31.21(b) when no tax is due, except as provided in §§ 31.24 and 31.26.

* * * * *

■ 79. Section 31.72 is amended by revising paragraph (b) to read as follows:

§ 31.72 Dealer in beer and dealer in liquors at the same location.

* * * * *

(b) *Rule in effect on January 1, 1988, and thereafter.* Any person who pays special tax (or who registers during the suspension period as provided in § 31.21(b)) as a retail dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 31.103(b)) is exempt from additional special tax (or from additional registration during the suspension period) as a retail dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax was paid (or registration was completed) as a retail dealer in beer. Similarly, any person who pays special tax (or who registers during the suspension period as provided in § 31.21(b)) as a wholesale dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 31.103(b)) is exempt from additional special tax (or from additional registration during the suspension period) as a wholesale dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax was paid (or registration was completed) as a wholesale dealer in beer.

* * * * *

■ 80. Section 31.91 is revised to read as follows:

§ 31.91 Liability of partners.

Any number of persons carrying on one business in partnership at any one place during any tax year shall be required to pay but one special tax (or to register but once during the suspension period as provided in § 31.21(b)) for such business.

(72 Stat. 1347; 26 U.S.C. 5143)

■ 81. Section 31.92 is revised to read as follows:

§ 31.92 Addition of partners or incorporation of partnership.

Except during the suspension period described in § 31.21(b), where a number of persons who have paid special tax as partners admit one or more new members to the firm or form a corporation (a separate legal entity) to take over the business, the new firm or corporation shall pay special tax before commencing business. During the suspension period described in § 31.21(b), the new firm or corporation must register as a new dealer.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

■ 82. Section 31.93 is revised to read as follows:

§ 31.93 Formation of a partnership by two dealers.

Except during the suspension period described in § 31.21(b), where two persons, each holding a special tax stamp for a business carried on by himself, form a partnership, the firm shall pay special tax to cover the business conducted by the partnership. During the suspension period described in § 31.21(b), if two registered dealers form a partnership, the firm must register as a new dealer.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 31.94 [Amended]

■ 83. Section 31.94 is amended:

■ a. In the second sentence, by adding after the word ''However,'' the words ''except during the suspension period described in § 31.21(b),''; and

■ b. By adding the following new sentence to the end of the paragraph: ''During the suspension period, the remaining partner or partners must file a new registration on Form 5630.5 within 30 days after the change in control.''

■ 84. In § 31.101, paragraph (b) is amended by designating the existing text as paragraph (b)(1), adding the heading ''*General.*'' to newly designated paragraph (b)(1), and adding a new paragraph (b)(2) before the section authority citation to read as follows:

§ 31.101 Special tax rates.

* * * * *

(b) * * *

(2) *Rate during suspension period.* During the suspension period described in § 31.21(b), the special (occupational) tax rate for all dealers in liquor or beer is zero.

* * * * *

■ 85. Section 31.102 is revised to read as follows:

§ 31.102 Date special tax is due.

Except during the suspension period described in § 31.21(b), special taxes shall be paid on or before July 1 of each year, or before engaging in business. During the suspension period when no tax is due, dealers must register by filing the special tax return, Form 5630.5, before commencement of business and on or before July 1 of each year thereafter.

(72 Stat. 1346; 26 U.S.C. 5142)

§ 31.104 [Amended]

■ 86. In § 31.104:

■ a. The first sentence is amended by adding after the words ''payment of'' the word ''applicable'';

■ b. The first sentence is further amended by adding after the words ''shall file a Form 5630.5 with'' the word ''applicable'';

■ c. The second sentence is amended by adding after the words ''subject to special tax'' the words ''(or required to register during the suspension period described in § 31.21(b))'';

■ d. The second sentence is further amended by adding after the words ''payment of'' the word ''applicable''; and

■ e. The third sentence is amended by adding after the words ''return and'' the word ''applicable''.

§ 31.104a [Amended]

■ 87. Section 31.104a is amended by adding after the words ''remittance of'' the word ''applicable''.

■ 88. Section 31.106 is amended by revising paragraphs (a), (b)(5), and (c) to read as follows:

§ 31.106 Special tax returns.

(a) *General.* Special tax shall be paid by return, and the filing of a return is required for registration purposes even though no tax is due during the suspension period described in § 31.21(b). The prescribed return is TTB Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with TTB in accordance with instructions on the form.

(b) * * *

(5) The class(es) of special tax to which the taxpayer is subject or to which the return relates during the suspension period described in § 31.21(b).

* * * * *

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax, or required to register during the suspension period described in § 31.21(b), for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, TTB Form 5630.5, with payment of applicable tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on TTB Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid or for which registration is being made during the suspension period described in § 31.21(b). The original of the list shall be filed with TTB in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 31.237.

* * * * *

§ 31.109 [Amended]

■ 89. In § 31.109, paragraph (a) is amended:

■ a. At the beginning of the first sentence, by removing the word ''Any'' and adding, in its place, the words ''Except during the suspension period described in § 31.21(b), any''; and

■ b. By adding the following new sentence to the end of the paragraph: ''During the suspension period, a failure to file a return may result in a penalty under 26 U.S.C. 5603(b).''

■ 90. Section 31.121 is amended by revising paragraph (a) to read as follows:

§ 31.121 Issuance of stamps.

(a) *Issuance*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, upon filing a return properly executed on Form 5630.5, together with a remittance in the applicable full amount due, the taxpayer will be issued an appropriately designated stamp. Special tax stamps will not be issued in the case of a return covering liability for a past period.

(2) *Exception for suspension period.* During the suspension period described in § 31.21(b) when registration is required but no tax is due, a special tax stamp will not be issued.

* * * * *

■ 91. The heading and text of § 31.124 are revised to read as follows:

§ 31.124 Passenger trains, aircraft, and vessels.

(a) *Issuance of stamps*—(1) Except as otherwise provided in paragraph (a)(2) of this section, special tax stamps may be issued in general terms ''in the United States'' to persons who will carry on the business of retail dealers in liquors or retail dealers in beer, on trains, aircraft, boats or other vessels, engaged in the business of carrying passengers. If sales of liquors are made at the same time on two or more passenger carriers, a special tax stamp shall be obtained for each such carrier. However, a dealer may transfer any such stamp from one passenger carrier to another on which he conducts his business, without registering the transfer with TTB, and he may conduct

such business throughout the passenger carrying train, aircraft, boat or other vessel, to which the stamp is transferred.

(2) During the suspension period described in § 31.21(b) when no tax is due, dealers operating on trains, aircraft, and vessels must register as provided in paragraph (b) of this section, but no special tax stamps will be issued.

(b) *Filing of Form 5630.5 and payment of tax.* A person subject to special tax (or to registration during the suspension period described in § 31.21(b)) on one or more passenger carriers shall file one Form 5630.5, prepared in the manner prescribed in § 31.106(b), with payment of applicable tax in accordance with § 31.101, to cover all such carriers and shall specify on the Form 5630.5 the number of passenger carriers for which special tax is being paid (or for which registration is being completed).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1344 as amended, 1347 as amended (26 U.S.C. 5123, 5143))

■ 92. Section 31.125 is revised to read as follows:

§ 31.125 Carriers not engaged in passenger service.

Except as provided in § 31.126, the retailing of liquor on any railroad train, aircraft, or boat that is not engaged in the business of carrying passengers is prohibited.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

■ 93. The heading and text of § 31.126 are revised to read as follows:

§ 31.126 Supply boats or vessels.

(a) *General.* Subject to paragraph (b) of this section, special tax stamps may be issued to persons carrying on the business of a retail dealer in liquor or a retail dealer in beer on supply boats or vessels operated by them, when such persons operate from a fixed address in a port or harbor and supply exclusively boats or other vessels, or persons thereon, at such port or harbor. Any person desiring to obtain a special tax stamp for such business shall file Form 5630.5, prepared in the manner prescribed in § 31.106(b), with any required remittance, and shall specify on the Form 5630.5, or on an attachment thereto: that the business will consist of supplying exclusively boats, vessels, or persons thereon; the name of the port or harbor at which the business is to be carried on; and the fixed address from which operations are to be conducted—*Provided*, That where such sales are to be made from two or more supply boats or vessels, the dealer shall obtain a special tax stamp for each such boat or vessel, and shall, in addition to the information required above to be specified on the Form 5630.5 or attachment, specify on the Form 5630.5 the number of supply boats or vessels for which special tax is being paid (or for which registration is being made during the suspension period described in § 31.21(b)). A dealer may transfer any such stamp from any boat or vessel on which he discontinues such sales to any other boat or vessel on which he proposes to conduct such business, without registering the transfer with TTB. If the taxpayer operates from two or more fixed addresses, he shall prepare, as required by § 31.106(c), one tax return, Form 5630.5, to cover all such addresses and shall, in addition, show on the attachment to the Form 5630.5 the number of stamps to be procured for supply boats or vessels operating from each address. On receipt of the special tax stamps, the taxpayer shall designate an appropriate number of stamps for each location and shall type thereon the trade name, if different from the name in which the stamp was issued, and the fixed address of the business conducted at the location for which the stamps are designated. He shall then forward the stamps to the place of business designated on the stamps. The taxpayer shall enter on each stamp received for retailing liquors on supply boats or vessels, immediately after the occupational tax classification, the phrase ''on supply boats'' and in the lower margin the notation, ''Covers supplying exclusively of boats or vessels, or persons thereon, at the Port (or Harbor) of'' followed by the name of such port or harbor.

(b) *Suspension of tax.* During the suspension period described in § 31.21(b), the requirements of paragraph (a) of this section will apply except with regard to the payment of special (occupational) tax and the issuance of special tax stamps.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

■ 94. Section 31.127 is amended by revising the section heading, designating the existing text as paragraph (a), adding the heading ''*General.*'' to newly designated paragraph (a), removing the word ''A'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ''Subject to paragraph (b) of this section, a'', and adding a new paragraph (b) before the section authority citation to read as follows:

§ 31.127 Retail dealers ''At Large.''

* * * * *

(b) *Suspension of tax.* During the suspension period described in § 31.21(b), the requirements of paragraph (a) of this section will apply except with regard to the payment of special (occupational) tax and the issuance of special tax stamps.

* * * * *

§ 31.131 [Amended]

■ 95. Section 31.131 is amended at the beginning by removing the word ''A'' and adding, in its place, the words ''Except during the suspension period described in § 31.21(b) when no special tax stamps are issued, a''.

§ 31.136 [Amended]

■ 96. Section 31.136 is amended:

■ a. In the first sentence, by adding after the words ''paid special tax'' the words ''(or filed a return as a registration during the suspension period described in § 31.21(b))'';

■ b. Also in the first sentence, by removing the word ''taxable'' and adding, in its place, the word ''tax''; and

■ c. Also in the first sentence, by adding after the words ''for the total'' the word ''applicable''.

■ 97. In § 31.151, paragraph (a) is amended:

■ a. By designating the existing text as paragraph (a)(1);

■ b. In the first sentence of newly designated paragraph (a)(1), by removing the word ''A'' and adding, in its place, the words ''Subject to paragraph (a)(2) of this section, a'';

■ c. Also in the first sentence of newly designated paragraph (a)(1), by removing the words ''taxable period'' and adding, in their place, the words ''tax year'';

■ d. Also in the first sentence of newly designated paragraph (a)(1), by adding after the words ''for which special tax was paid'' the words ''(or for which registration was completed during the suspension period described in § 31.21(b))'';

■ e. Also in the first sentence of newly designated paragraph (a)(1), by removing the words ''and stated on the special tax stamp,''; and

■ f. By adding a new paragraph (a)(2) to read as follows:

§ 31.151 Amended return, Form 5630.5; endorsement on stamp.

(a) * * *

(2) If the change of location occurs during the suspension period described in § 31.21(b) when no tax is due and no special tax stamp is issued, the requirements of paragraph (a)(1) of this

section still apply, except with regard to surrendering the special tax stamp.

* * * * *

■ 98. Section 31.152 is amended by designating the existing text as paragraph (a), removing the word ''A'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words, ''Except as otherwise provided in paragraph (b) of this section, a'', removing the words ''special tax stamp'' in the first sentence of newly designated paragraph (a) and adding, in their place, the words ''Form 5630.5, Special Tax Registration and Return,'' and adding a new paragraph (b) before the section authority citation to read as follows:

§ 31.152 Failure to register change of address within 30 days.

* * * * *

(b) During the suspension period described in § 31.21(b) when no tax is due and no special tax stamp is issued, a failure to register the change of address may result in a penalty under 26 U.S.C. 5603(b).

* * * * *

■ 99. Section 31.161 is amended by revising the second sentence to read as follows:

§ 31.161 Sale of business.

* * * Where a change occurs in the proprietorship of a business for which special tax has been paid or for which registration has been completed during the suspension period described in § 31.21(b), the successor shall pay special tax (or shall register during the suspension period) for such business, except as provided in § 31.169.

* * * * *

■ 100. Section 31.162 is revised to read as follows:

§ 31.162 Incorporation of business.

Where an individual or a firm engaged in business requiring payment of special tax (or requiring registration during the suspension period described in § 31.21(b)) forms a corporation to take over and conduct the business, the corporation (a separate legal entity) shall pay special tax (or shall register during the suspension period) in its own name.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

■ 101. Section 31.163 is revised to read as follows:

§ 31.163 New corporation.

Where a new corporation is formed to take over and conduct the business of one or more corporations which have paid special tax (or which have registered during the suspension period described in § 31.21(b)), the new corporation shall pay special tax (or shall register during the suspension period) in its own name.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 31.164 [Amended]

■ 102. Section 31.164 is amended by adding after the words ''tax stamp held'' the words ''(or a registration completed during the suspension period described in § 31.21(b))''.

§ 31.165 [Amended]

■ 103. Section 31.165 is amended by adding after the words ''paid the special tax'' the words ''(or who has registered during the suspension period described in § 31.21(b))'', and adding after the words ''additional special tax'' the words ''(or to complete a new registration)''.

§ 31.166 [Amended]

■ 104. Section 31.166 is amended by adding after the words ''Additional special tax'' the words ''(or additional registration during the suspension period described in § 31.21(b))''.

§ 31.167 [Amended]

■ 105. Section 31.167 is amended by adding after the words ''Additional special tax'' the words ''(or additional registration during the suspension period described in § 31.21(b))''.

§ 31.168 [Amended]

■ 106. Section 31.168 is amended by adding after the words ''Additional special tax'' the words ''(or additional registration during the suspension period described in § 31.21(b))''.

§ 31.169 [Amended]

■ 107. Section 31.169 is amended:

■ a. In the introductory text, by removing the words ''other than the special taxpayer'';

■ b. Also in the introductory text, by removing the words ''taxable period'' and adding, in their place, the words ''tax year'';

■ c. Also in the introductory text, by adding after the words ''tax was paid'' the words '', or for which registration was made during the suspension period described in § 31.21(b)''; and

■ d. In the concluding text, by adding after the words ''the succession, and'' the words ''(except if the change of control occurs during the suspension period described in § 31.21(b) when a special tax stamp is not issued)''.

■ 108. Section 31.170 is amended by designating the existing text as paragraph (a), removing the word ''A'' at the beginning of the first sentence of newly designated paragraph (a) and adding, in its place, the words ''Except as otherwise provided in paragraph (b) of this section, a'', and adding a new paragraph (b) before the section authority citation to read as follows:

§ 31.170 Failure to perfect right of succession within 30 days.

* * * * *

(b) During the suspension period described in § 31.21(b) when no tax is due and no special tax stamp is issued, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

* * * * *

§ 31.181 [Amended]

■ 109. Section 31.181 is amended by adding at the end before the period the words '', or to the registration requirement during the suspension period described in § 31.21(b)''.

§ 31.182 [Amended]

■ 110. Section 31.182 is amended:

■ a. In the first sentence of paragraph (a), by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))'';

■ b. In the second sentence of paragraph (a), by adding after the words ''exempt from special tax'' the words ''or registration'';

■ c. In the second sentence of paragraph (b), by adding after the words ''payment of special tax'' the words ''(or from registration during the suspension period described in § 31.21(b))''; and

■ d. In the last sentence of paragraph (b), by adding after the words ''tax shall be paid'' the words ''(or registration shall be completed during the suspension period described in § 31.21(b))''.

§ 31.183 [Amended]

■ 111. Section 31.183 is amended:

■ a. In the first sentence of paragraph (a), by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))'';

■ b. In the second sentence of paragraph (a), by adding after the words ''exempt from special tax'' the words ''or registration'';

■ c. In the second sentence of paragraph (b), by adding after the words ''exempt from special tax'' the words ''(or from registration during the suspension period described in § 31.21(b))'';

■ d. In the last sentence of paragraph (b), by adding after the words ''tax shall be paid'' the words ''(or registration

shall be made during the suspension period described in § 31.21(b))''; and
■ e. In paragraph (c), by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))''.

§ 31.183a [Amended]

■ 112. Section 31.183a is amended:
■ a. In the first sentence of paragraph (a), by adding after the words ''(including such tax under the transition rule of § 31.103(b))'' the words '', and no such proprietor shall be required to register during the suspension period described in § 31.21(b),'';
■ b. In the last sentence of paragraph (a), by adding after the words ''exempt from special tax'' the words ''or registration'';
■ c. In the second sentence of paragraph (b), by adding after the words ''exempt from special tax'' the words ''(or from registration during the suspension period described in § 31.21(b))'';
■ d. In the last sentence of paragraph (b), by adding after the words ''tax shall be paid'' the words ''(or registration shall be completed during the suspension period described in § 31.21(b))''; and
■ e. In paragraph (c), by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))''.

§ 31.184 [Amended]

■ 113. Section 31.184 is amended:
■ a. In the first sentence of paragraph (a), by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))'';
■ b. In the last sentence of paragraph (a), by adding after the words ''exempt from special tax'' the words ''or registration'';
■ c. In the second sentence of paragraph (b), by adding after the words ''exempt from special tax'' the words ''(or from registration during the suspension period described in § 31.21(b))'';
■ d. In the last sentence of paragraph (b), by adding after the words ''tax shall be paid'' the words ''(or registration shall be completed during the suspension period described in § 31.21(b))''; and
■ e. In paragraph (c), by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))''.

§ 31.185 [Amended]

■ 114. Section 31.185 is amended:
■ a. In paragraph (a), by adding after the words ''paid special tax'' the words ''(or who has registered during the suspension period described in § 31.21(b))'';
■ b. Also in paragraph (a), by adding after the words ''additional special tax'' the words ''or register'';
■ c. In paragraph (b), by adding after the words ''paid the tax'' the words ''(or who has registered during the suspension period described in § 31.21(b))''; and
■ d. Also in paragraph (b), by adding after the words ''additional special tax'' the words ''or register''.

§ 31.186 [Amended]

■ 115. Section 31.186 is amended by adding after the words ''paid special tax'' the words ''(or who has registered during the suspension period described in § 31.21(b))'', and adding after the words ''additional special tax'' the words ''or register''.

§ 31.187 [Amended]

■ 116. Section 31.187 is amended by adding after the words ''pay special tax,'' the words ''or to register during the suspension period described in § 31.21(b),''.

§ 31.187a [Amended]

■ 117. Section 31.187a is amended by adding at the end before the period the words '', or to register during the suspension period described in § 31.21(b)''.

§ 31.188 [Amended]

■ 118. In § 31.188, the concluding text is amended by removing the comma after the words ''pay special tax'' and adding, in its place, the words ''(or to register during the suspension period described in § 31.21(b))''.

§ 31.189 [Amended]

■ 119. Section 31.189 is amended:
■ a. In the first sentence of the concluding text, by adding at the end before the period the words ''or to register during the suspension period described in § 31.21(b)''; and
■ b. In the second sentence of the concluding text, by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))''.

§ 31.190 [Amended]

■ 120. Section 31.190 is amended by adding after the words ''pay special tax'' the words ''(or to register during the suspension period described in § 31.21(b))''.

§ 31.191 [Amended]

■ 121. In § 31.191, paragraph (b) is amended by adding after the words ''pay special tax'' the words ''(or shall register during the suspension period described in § 31.21(b))''.

■ 122. In § 31.211:
■ a. The introductory text of paragraph (a) is amended at the beginning by removing the word ''It'' and adding, in its place, the words ''Except as otherwise provided in paragraphs (b) and (c) of this section, it'';
■ b. Paragraph (b) is redesignated as paragraph (c); and
■ c. A new paragraph (b) is added to read as follows:

§ 31.211 Unlawful purchases of distilled spirits.

* * * * *

(b) *Suspension of tax.* During the period of suspension of special (occupational) tax described in § 31.21(b), it is unlawful for any dealer to purchase distilled spirits for resale from any person other than:

(1) A wholesale dealer (including a State, a political subdivision thereof, the District of Columbia, and a distilled spirits plant) who is required to keep records under §§ 31.221 through 31.233 at the place where the distilled spirits are purchased;

(2) A retail liquor store operated by a State, a political subdivision thereof, or the District of Columbia; or

(3) A person not required to register as a wholesale liquor dealer, as provided in §§ 31.188 through 31.190, § 31.192, and § 31.193.

* * * * *

Dated: July 6, 2005.

John J. Manfreda,

Administrator.

Approved: September 14, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–21563 Filed 10–28–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–074]

RIN 1625–AA09

Drawbridge Operation Regulations: Saugus River, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the General Edwards SR1A Bridge, at mile 1.7, across the Saugus

River between Lynn and Revere, Massachusetts. This temporary change to the drawbridge operation regulations allows the bridge to remain in the closed position from November 1, 2005 through April 30, 2006. This action is necessary to facilitate structural maintenance at the bridge.

DATES: This rule is effective from November 1, 2005, through April 30, 2006.

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 (CGD01–05–074) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 29, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Saugus River, Massachusetts, in the **Federal Register** (70 FR 56878). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

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

The rehabilitation repairs to the General Edwards Bridge are vital, necessary repairs that must be performed as soon as possible to assure the continued safe reliable operation of the bridge.

The time period selected for these repairs, November through April, is the best time to perform the repairs because the bridge seldom opens for vessel traffic during that time period. There were 7 bridge openings in November 2004, and no openings December through March. The few bridge openings that were requested in November were for recreational vessels that may have passed under the draw at low tide without requiring a bridge opening.

The impacts to the marine transportation system are therefore minimized by scheduling the bridge closure November through April; therefore, any delay in implementing these repairs would not be in the best interest of the public and contrary to public safety. Delaying the effective date of this rulemaking would also require the rehabilitation construction work to continue beyond the proposed April 30, 2005, end date, which would result in the bridge closure continuing into May when recreational vessel traffic increases.

As a result of the above information the Coast Guard believes the best time period to perform this vital work and minimize the impacts on the marine users is November through April.

Background and Purpose

The General Edwards SR1A Bridge at mile 1.7, across the Saugus River, has a vertical clearance of 27 feet at mean high water and 36 feet at mean low water. The existing regulations at 33 CFR 117.618 require the draw to open on signal, except that, from April 1 through November 30, midnight to 8 a.m. an eight-hour notice is required. From December 1 through March 31, an eight-hour notice is required at all times for bridge openings.

The bridge owner, the Department of Conservation and Recreation (DCR), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2005 through April 30, 2006, to facilitate structural rehabilitation construction at the bridge.

This temporary rule suspends the existing drawbridge operation regulations, listed at 33 CFR 117.618(b), and adds a new temporary paragraph (d) to allow the bridge to remain in the closed position from November 1, 2005 through April 30, 2006.

The Coast Guard believes this temporary rule is reasonable because bridge openings are rarely requested during the time period the SR1A Bridge will be closed for these repairs and the fact that this work is vital, necessary, and must be performed in order to assure the continued safe and reliable operation of the bridge.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

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 conclusion is based on the fact that the bridge rarely opens during the November through April time period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 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 conclusion is based on the fact that the bridge rarely opens during the November through April time period.

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.

No small entities requested Coast Guard assistance and none was given.

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 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 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 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 M16475.1D, 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 (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. From November 1, 2005 through April 30, 2006, § 117.618(b) is suspended and a new paragraph (d) is added to read as follows:

§ 117.618 Saugus River.

* * * * *

(d) The draw of the General Edwards SR1A Bridge at mile 1.7, need not open for the passage of vessel traffic from November 1, 2005 through April 30, 2006.

Dated: October 21, 2005.

David P. Pekoske,

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

[FR Doc. 05–21574 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–15–P

Proposed Rules

Federal Register
Vol. 70, No. 209
Monday, October 31, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22472; Airspace Docket No. 05–AGL–08]

Proposed Establishment of Class D Airspace; Camp Ripley, MN; Proposed Establishment of Class E Airspace; Camp Ripley, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class D airspace at Camp Ripley, MN, and establish Class E airspace at Camp Ripley, MN. This action would establish a radius of Class D airspace, and establish a radius of Class E airspace for Ray S. Miller Army Airfield.

DATES: Comments must be received on or before January 25, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the Docket Number FAA–2005–22472/ Airspace Docket No. 05–AGL–08, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address. An informal docket may also be examined during normal business hours at FAA Terminal Operations, Central Service Area Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7131, or David Sapadin, telephone (847) 294–7131.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22472/Airspace Docket No. 05–AGL–08.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D airspace at Camp Ripley, MN, and establish Class E airspace at Camp Ripley, MN, for the Ray S. Miller Army Airfield. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, Class E airspace areas extending upward from the surface of the earth are published in paragraph 6002, of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1. of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL MN D Camp Ripley, MN [New]

Camp Ripley, Ray S. Miller Army Airfield, MN
(Lat. 46°05′00″ N., long. 94°21′01″ W.)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 3.9-mile radius of the Ray S. Miller Army Airfield. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AGL MN E2 Camp Riley, MN [New]

Camp Riley, Ray S. Miller Army Airfield, MN
(Lat. 46°05′00″ N., long. 94°21′01″ W.)

Within a 3.9-mile radius of the Ray S. Miller Army Airfield.

* * * * *

Issued in Des Plaines, Illinois on October 12, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–21585 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 17, 19, 24, 25, 26, 27, and 31

[Notice No. 52]

RIN 1513—AB04

Suspension of Special (Occupational) Tax (2004R–778P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; cross-reference to temporary rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is issuing a temporary rule amending the TTB regulations relating to special (occupational) tax, to reflect a 3-year tax suspension effected by section 246 of the American Jobs Creation Act of 2004. Section 246 amends the Internal Revenue Code of 1986 to provide that, during the period from July 1, 2005, through June 30, 2008, the rate of special (occupational) tax on certain occupations will be zero. The occupations affected by the 3-year tax suspension are: Manufacturers of nonbeverage products who claim tax drawback; proprietors of distilled spirits plants, alcohol fuel plants, bonded and taxpaid wine premises, and breweries; and wholesale and retail dealers in distilled spirits, wine, and beer. The requirements to register annually and keep prescribed records remain in effect. In this notice of proposed rulemaking, we are soliciting comments from all interested parties on these regulatory amendments. The text of the regulations in the temporary rule published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of the proposed regulations.

DATES: Comments must be received on or before December 30, 2005.

ADDRESSES: You may send comments to any of the following addresses—

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 52, P.O. Box 14412, Washington, DC 20044—4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov.* Federal e-rulemaking portal; follow instructions for submitting comments.

You may view copies of any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this notice and any comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Steve Simon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, Suite 200E, 1310 G Street NW., Washington, DC 20220; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

In the Rules and Regulations section of this issue of the **Federal Register**, we are publishing a temporary rule implementing section 246 of the American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (''the Act''), signed by President Bush on October 22, 2004. Section 246 of the Act, entitled ''Suspension of Occupational Taxes Relating to Distilled Spirits, Wine, and Beer,'' amended subpart G of part II of subchapter A of chapter 54 of the Internal Revenue Code of 1986 (IRC) by redesignating section 5148 as section 5149 and adding a new section 5148 (26 U.S.C. 5148) entitled ''Suspension of Occupational Tax.'' New section 5148 provides that, during the 3-year period from July 1, 2005, through June 30, 2008, the rate of special (occupational) tax imposed under sections 5081, 5091, 5111, 5121, and 5131 will be zero.

The effect of new section 5148 is that the following occupations are not subject to payment of special (occupational) tax during the suspension period: manufacturer of nonbeverage products, proprietor of distilled spirits plant, proprietor of alcohol fuel plant, proprietor of bonded wine cellar, proprietor of bonded wine warehouse, proprietor of taxpaid wine bottling house, brewer, wholesale dealer in liquors (distilled spirits, wines, and beer), wholesale dealer in beer, retail dealer in liquors (distilled spirits, wines, and beer), and retail dealer in beer. On the other hand, the following occupations, which are not covered by the IRC sections listed in new section 5148, are not affected by the suspension and remain subject to the special (occupational) tax during the suspension period: User of or dealer in

specially denatured alcohol, user of tax-free alcohol, manufacturer of tobacco products (that is, cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco), manufacturer of cigarette papers or tubes, and export warehouse proprietor (for the export of tobacco products, cigarette papers, or cigarette tubes).

Although the tax rate for the occupations affected by the suspension will be zero during the suspension period, new section 5148 further provides that persons engaging in those occupations must still register annually and comply with applicable recordkeeping requirements. Finally, section 246 of the Act amended section 5117 of the IRC (26 U.S.C. 5117) by adding a new subsection (d) to provide that during the suspension period a dealer may purchase distilled spirits, for resale, only from persons required to keep records as a wholesale liquor dealer, except as otherwise specifically provided by law or regulations. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the IRC provisions relating to special (occupational) tax.

The temporary regulations published elsewhere in this issue of the **Federal Register** involve amendments to parts 17, 19, 24, 25, 26, 27, and 31 of the TTB regulations (27 CFR parts 17, 19, 24, 25, 26, 27, and 31). The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Public Participation

Comments Sought

We request comments from everyone interested. All comments must reference Notice No. 52 and must include your name and mailing address. They must be legible and written in language acceptable for public disclosure. Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We regard all comments as originals.

Confidentiality

All comments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Submitting Comments

You may submit comments in any of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section of this document.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must:

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation ensures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must:

(1) Contain your e-mail address;

(2) Reference Notice No. 52 on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this document on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under Notice No. 52.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Public Disclosure

You may view copies of the temporary rule, this document, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post the temporary rule, this document, and any comments we receive on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this document and the submitted comments, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this document's number and title to view the posted comments.

Regulatory Flexibility Act

Although we are issuing this notice of proposed rulemaking, it has been determined that it is not subject to the provisions of 5 U.S.C. 553(b). Because this proposed rule contains no new collections of information, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

We have determined that this notice of proposed rulemaking is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The collections of information contained in the regulations amended by this temporary rule have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)) under control numbers 1513–0005, 1513–0088, 1513–0112, and 1513–0113. There is no new or revised collection of information imposed by this proposed rule, and there is no change in the reporting or recordkeeping burden. Thus, no new OMB control numbers will be obtained.

Drafting Information

The principal author of this document is Steve Simon, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food

additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic fund transfers, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 31

Alcohol and alcoholic beverages, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 17, 19, 24, 25, 26, 27, and 31 as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

1. The authority citation for part 17 is revised to read as follows:

Authority: 26 U.S.C. 5010, 5131–5134, 5143, 5146, 5148, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. The proposed amendatory instructions and the proposed amended regulatory text for part 17 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.

PART 19—DISTILLED SPIRITS PLANTS

3. The authority citation for part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

4. The proposed amendatory instructions and the proposed amended regulatory text for part 19 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.

PART 24—WINE

5. The authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5148, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

6. The proposed amendatory instructions and the proposed amended regulatory text for part 24 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.

PART 25—BEER

7. The authority citation for part 25 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5148, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

8. The proposed amendatory instructions and the proposed amended regulatory text for part 25 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

9. The authority citation for part 26 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131—5134, 5141, 5146, 5148, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

10. The proposed amendatory instructions and the proposed amended regulatory text for part 26 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

11. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5148, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

12. The proposed amendatory instructions and the proposed amended regulatory text for part 27 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.

PART 31—ALCOHOL BEVERAGE DEALERS

13. The authority citation for part 31 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5148, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

14. The proposed amendatory instructions and the proposed amended regulatory text for part 31 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.

Signed: July 6, 2005.

John J. Manfreda,

Administrator.

Approved: September 14, 2005.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 05–21562 Filed 10–28–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD17–05–002]

RIN 1625–AA87

Security Zone; High Capacity Passenger Vessels and Alaska Marine Highway System Vessels in Alaska

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard is revising its proposed rule published March 9, 2005, to establish permanent moving security zones around all escorted High Capacity Passenger Vessels (''HCPV'') and escorted Alaska Marine Highway System Vessels (''AMHS vessels'') during their transit in the navigable waters of the Seventeenth Coast Guard District. The 250-yard speed restriction zone, the 25-yard security zone around moored and anchored vessels, and the waiver request process in the notice of proposed rulemaking (NPRM) have been eliminated. The Coast Guard has revised the proposed security zones prohibiting any vessel from entering within 100 yards of an escorted HCPV or escorted AMHS vessel while in transit. These security zones are necessary to mitigate potential terrorist acts and enhance public and maritime safety and security. Permission to enter these security zones may be granted by the designated on-scene representative.

DATES: Comments and related material must reach the Coast Guard on or before December 30, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD17–05–002 and are available for inspection or copying at United States Coast Guard, District 17 (dpi), 709 West 9th Street, Juneau, AK 99801 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Matthew York, District 17 (dpi), 709 West 9th Street, Juneau, AK 99801, (907) 463–2821.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska'' in the **Federal Register** (70 FR 11595, March 9, 2005), docket number CGD17–05–002. That NPRM included provisions for a 250-yard speed restriction zone, a 25-yard security zone around moored and anchored vessels, and a waiver request process. We are removing those three provisions from the proposed rule in this supplemental NPRM.

The revised proposed security zones are limited to High Capacity Passenger Vessels (HCPV) and Alaska Marine Highway System Vessels (AMHS) vessels during transit in the waters of the Seventeenth Coast Guard District. These security zones will only apply to HCPV and AMHS vessels transiting under an escort as defined in this SNPRM. These permanent security zones have been carefully designed to minimally impact the public while providing protections for HCPV and AMHS vessels.

Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and addresses, identifying this rulemaking (CGD17–05–002) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comment should enclose a stamped, self-addressed postcard or envelope.

Comments on this supplemental NPRM must reach the Coast Guard on or before December 30, 2005. The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

The Coast Guard has not scheduled a public hearing at this time. You may request a public hearing by writing to the Seventeenth Coast Guard District at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial to the rulemaking. If it is determined that an opportunity for oral presentation will aid this rulemaking, the Coast Guard will schedule a public hearing at a time and place announced in a separate notice published in the **Federal Register**.

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 District Commander and the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. Terrorists have demonstrated both desire and ability to utilize multiple means in different geographic areas to successfully carry out their terrorist missions, highlighted by the recent subway bombings in London.

During the past 3 years, the Federal Bureau of Investigation has issued several advisories to the public concerning the potential for terrorist attacks within the United States. The October 2002 attack on a tank vessel, M/V LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) and Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); and Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Furthermore, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. port and waterway users to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In addition to escorting vessels, the Coast Guard has determined the need for additional security measures during their transit. A security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of these vessels. The District Commander has made a determination that it is necessary to establish a security zone around HCPV and AMHS vessels that are escorted to safeguard people, vessels and maritime traffic.

Discussion of Comments and Changes

The Coast Guard received a total of 147 documents containing comments to the proposed rule. The documents included letters from commercial fishermen, commercial fishing organizations, individual float plane operators, float plane organizations, harbor masters, cruise line agencies, charter vessels, pilot organizations, the Alaska Marine Highway System, government officials and other concerned mariners. Responses to these comments and changes made in the proposed rule are discussed in the following paragraphs.

Numerous comments suggested that the security zones be in place only at heightened Maritime Security (MARSEC) levels. The Coast Guard disagrees. MARSEC Level 1 is the level at which minimum, appropriate protective security measures shall be maintained. At MARSEC Level 2, additional measures shall be maintained as a result of a heightened risk. At MARSEC Level 3, a transportation security incident is probable or imminent. The Coast Guard maintains that security zones around HCPV and AMHS vessels are a minimum appropriate security measure for MARSEC Level 1.

The most frequent comments were focused on the unique geography of the tight, constricted waterways and ports in Alaska. One comment suggested that the zone be in effect only when a Coast Guard asset is on-scene. The NPRM indicated the zone would be in effect at all times in the waters of District 17. The Coast Guard recognizes that Alaska's waterways are narrow and are shared with a myriad of maritime professionals as well as recreational boaters. The Coast Guard has revised the proposed rule by having these HCPV and AMHS security zones in effect only when there is a Coast Guard asset on-scene.

Several comments expressed concern for the time associated with gaining permission to enter the security zone. Other comments expressed concern on who would retain the master lists of ''waiver/exempt'' vessels and the difficulty of maintaining an accurate Maritime Domain Awareness status of vessels on waivers. Based on these comments, the Coast Guard has reassessed its permission-to-enter proposal and has decided to revise the proposed rule and amends the rule by removing the waiver process and replacing it with the requirement that permission to enter the security zone be given by the designated on-scene representative on VHF channel 16 or VHF Channel 13 on a case-by-case basis.

Numerous comments addressed the 250-yard speed zone restriction and the minimum speed necessary to maintain a safe course. The Coast Guard recognizes that in order for float planes to safely take off and land, they will likely be at speeds between 40 and 60 knots. Numerous Southeast Alaskan ports would also see an increase in maritime traffic outside the 250 yard speed restriction zone, particularly Tongass Narrows and Gastineau Channel. This increase in traffic would likely have a detrimental effect on the safe navigation of maritime traffic. Accordingly, the Coast Guard has revised the proposed rule and eliminated the 250-yard speed zone restriction.

Numerous comments addressed certain areas where a 100-yard security zone would create navigational situations that result in vessels coming into close proximity of HCPV and AMHS vessels in places like Snow Pass, Point Arden, Sunny Point, Tongass Narrows and Eastern Channel. While the Coast Guard recognizes that these areas are navigationally narrow, the Coast Guard will require vessels to remain 100 yards away from HCPV or AMHS vessels while those vessels are escorted by the designated on-scene representative. Speed and course adjustments must be made early enough to allow for sufficient sea room for the safe passage of the HCPV or AMHS vessels. Additionally, Rule 9 of the International Rules of the Road requires vessels less than 20 meters in length to not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway. Vessels anchored in a designated area will be permitted to remain at anchor until the HCPV or AMHS Ferry has passed. As noted previously, the Coast Guard has revised the proposed rule so that security zones would be in effect only when there is a Coast Guard asset or designated representative on-scene.

Numerous comments opposed the 25-yard security zone around moored and anchored vessels. Comments stated the rule would prevent access to fuel docks, processing facilities, and other marine-related businesses along with access to various Southeast Alaskan small boat harbors such as the Hansen, Ryus, Daly floats, Casey Moran float, Thomas Basin, Juneau fish processing facilities, Marine Park lightering dock, Juneau Intermediate Vessel Float, Skagway Small Boat Harbor, and Whittier Small Boat Harbor. Another comment was received about the need for city officials to access municipal utilities, water, wastewater, telephone and electric utilities located under the pier and the only way to access those utilities was taking a skiff on the water and going under the pier. Based on these comments, the Coast Guard has revised the proposed rule to eliminate the 25-yard security zone for moored and anchored vessels. The security concerns for moored and anchored vessels will be addressed in a separate notice of proposed rulemaking (NPRM).

Several comments addressed the applicability of the rule to fishing vessels with gear in the water, fishing vessels in transit, and fish tenders. For the purposes of clarifying this particular section of the NPRM, the Coast Guard proposes revising the security zone by adding language to the proposed rule that ''vessels defined as engaged in fishing as per COLREGS Rule 3(d), are exempt from this rule. Rule (3)(d) states that the term 'Vessel engaged in fishing' means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.'' Therefore, fish tenders, processors, and trollers are not exempt from this rule.

Some comments addressed the need to have the widest dissemination of the final rule as possible, including public service announcements, walking the docks, fliers, and Broadcasts Notice to Mariners (BNM). The Coast Guard proposes to broadcast the final rule published in the **Federal Register** via BNM, fliers, and announcements.

Several comments requested a public hearing, and others requested that the comment period be extended. The Coast Guard re-opened the public comment period and published a second 30-day notice and comment period which expired on May 27, 2005 (70 FR 21702, April 27, 2005). The Coast Guard may hold a public hearing, if appropriate, prior to adoption of a final rule. Based on all the comments received to date, there has been an adequate forum and sufficient time for the public to express its concerns, and the comment period on the revised proposed rule has been re-opened until December 30, 2005.

One comment was received expressing concern that the availability of Search and Rescue (SAR) assets would be jeopardized due to enforcement of the security zones. The Coast Guard disagrees. The SAR Coordinator for District 17 would retain the ability to direct Coast Guard assets to respond to SAR cases and would not decrease the Coast Guard's abilities to respond in a safe and efficient manner.

Some comments were received expressing concern about the potential

punishment for violators of the security zone. If the proposed rule is made effective, the Coast Guard would be able to seek both criminal penalties, civil penalties, or both against violators of these HCPV and AMHS security zones.

One comment expressed concern that if the Coast Guard is unwilling to back the rule up with deadly force, the rule cannot serve its stated purpose and will only serve to restrict the reasonable freedoms of law-abiding citizens. Another comment expressed concern that a 100-yard buffer will not stop a terrorist with explosives from blowing-up a cruise ship. The Coast Guard appreciates these comments and concerns and disagrees based upon clear policy guidance designed to prepare Coast Guard members on how to react appropriately when confronted with a use of force situation.

Discussion of Proposed Rule

This proposed rule would establish permanent 100-yard security zones around HCPV and AMHS vessels that are being escorted by a Coast Guard surface, air, or by other state or federal law enforcement agency designated by the Captain of the Port (COTP) during their transit through the Seventeenth Coast Guard District. Persons desiring to transit within 100 yards of an escorted HCPV or AHMS vessel in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) and obtain permission to transit within 100 yards of the escorted HCPV or AMHS vessels. The boundaries of the Seventeenth Coast Guard District are defined in 33 CFR 3.85–1(b). This includes territorial waters 12 nautical miles from the territorial sea baseline as defined in 33 CFR part 2 subpart B.

Stationary vessels that are moored or anchored must remain moored or anchored when an escorted HCPV or AMHS vessel approaches within 100 yards of the stationary vessel unless the designated on scene representative has granted approval for the stationary vessel to do otherwise.

Regulatory Evaluation

Although one public comment stated that this action constitutes a significant regulatory action, the Coast Guard disagrees based on the relatively small size of the limited access area around each ship and the minimal amount of time that vessels will be restricted when the zone is being enforced. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the on scene designated representatives. 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This permanent security zone only applies to HCPV and AMHS vessels that are transiting with an escort. It does not apply when the vessels are moored or anchored. Furthermore, vessels desiring to enter the security zone may contact the designated on scene representative and request permission to enter the zone.

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 this rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 LT Matthew York, District 17 (dpi), 709 West 9th St, Room 753, Juneau, Alaska 99801. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does 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 create an environmental risk to health or risk to safety that might 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

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 proposes to amend 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 § 165.1711 to read as follows:

§ 165.1711 Security Zones; Waters of the Seventeenth Coast Guard District.

(a) *Definitions.* As used in this section—

Alaska Marine Highway System vessel (''AMHS vessel'') means the M/V AURORA, M/V CHENEGA, M/V COLUMBIA, M/V FAIRWEATHER, M/V KENNICOTT, M/V LECONTE, M/V LITUYA, M/V MALASPINA, M/V MATANUSKA, M/V TAKU, and the M/V TUSTUMENA.

Designated on Scene Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.85, to act on his or her behalf, or other Federal, State or local law enforcement agency personnel designated by the COTP.

Escorted HCPV or AMHS vessel means a HCPV or AMHS vessel that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State, Federal or local law enforcement assets displaying the applicable agency markings and or equipment associated with the agency.

Federal Law Enforcement Officer means any federal government law enforcement officer who has authority to enforce federal criminal laws.

High Capacity Passenger Vessel (''HCPV'') means a passenger vessel greater than 100 feet in length that is authorized to carry more than 500 passengers for hire.

State law enforcement Officer means any State or local government law enforcement officer who has authority to enforce State or local criminal laws.

(b) *Location.* The following areas are security zones: All waters within 100 yards around escorted High Capacity Passenger Vessels or escorted Alaska Marine Highway System vessels in the navigable waters of the Seventeenth Coast Guard District as defined in 33 CFR 3.85–1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 100 yards of an escorted HCPV or escorted AMHS vessel during their transits within the navigable waters of the Seventeenth Coast Guard District.

(2) Moored or anchored vessels that are overtaken by this moving zone must remain stationary at their location until the escorted vessel maneuvers at least 100 yards away.

(3) The local Captain of the Port may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(4) Persons desiring to transit within 100 yards of a moving, escorted HCPV or AMHS vessel in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz), VHF channel 13 (156.650 MHz) to receive permission.

(5) If permission is granted to transit within 100 yards of an escorted HCPV or AMHS vessel, all persons and vessels must comply with the instructions of the designated on scene representative.

Dated: October 18, 2005.

James C. Olson,

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

[FR Doc. 05–21576 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0056; FRL–7990–2]

RIN 2060–AN32

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reconsideration of final rule; proposed amendments.

SUMMARY: On September 13, 2004, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters. In this action, EPA is proposing a limited number of amendments to the NESHAP. In response to a petition for reconsideration, EPA is proposing and

requesting comment on an amendment allowing for consolidated testing of commonly vented boilers under the emission averaging provision. In addition, EPA is proposing amendments and technical corrections to the final rule to clarify some applicability and implementation issues raised by stakeholders subject to the final rule.

DATES: *Comments.* Comments must be received on or before December 15, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 10, 2005, a public hearing will be held on November 15, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2002–0058 (Legacy Docket ID No. A–96–47) by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/docket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-rdocket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket and Information. Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2022–0058 (Legacy Docket ID No. A–96–47). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www/epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are ''anonymous access'' systems, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held on November 15, 2005 at the EPA facility, Research Triangle Park, NC, or an alternative site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice.

Docket. EPA has established an official public docket for today's notice, including both Docket ID No. OAR–2002–0058 and Legacy Docket ID No. A–96–47. The official public docket consists of the documents specifically referenced in today's notice, any public comments received, and other information related to the notice. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's notice. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, 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 Pubic Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general and technical information, contact Mr. James Eddinger, Combustion Group, Emission Standards Division, Mailcode: C439–01, U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5426; fax number: (919) 541–5450; e-mail address: *eddinger.jim@epa.gov.* For questions about the public hearing, contact Ms. Pamela Garrett, Combustion Group, Emission Standards Division, Mailcode: C439–01, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–7966; e-mail address: *garrett.pamela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline: The information presented in this preamble is organized as follows:

I. General Information

A. Does this notice apply to me?

Categories and entities potentially affected by today's notice include:

Category	SIC code [a]	NAICS code [b]	Examples of potentially regulated entities
Any industry using a boiler or process heater as defined in the final rule.	24	321	Manufacturers of lumber and wood products.
	26	322	Pulp and paper mills.
	28	325	Chemical manufacturers.
	29	324	Petroleum refineries, and manufacturers of coal products.
	30	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	33	331	Steel works.
	34	332	Electroplating, plating, polishing, anodizing, and coloring.
	37	336	Manufacturers of motor vehicle parts and accessories.
	49	221	Electric, gas, and sanitary services.
	80	622	Health services.
	82	611	Educational services.

[a] Standard Industrial Classification.
[b] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's notice. To determine whether your facility is affected by today's notice, you should examine the applicability criteria in 40 CFR 63.7485 of the final rule. If you have questions regarding the applicability of today's notice to a particular entity, consult Mr. Jim Eddinger listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How do I submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to the one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of today's notice also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www/epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

On September 13, 2004 (69 FR 55218), we promulgated the NESHAP for industrial, commercial, and institutional boilers and process heaters as subpart DDDDD of 40 CFR part 63. In accordance with section 112(d) of the Clean Air Act (CAA), the NESHAP contains technology-based emissions standards reflecting the maximum achievable control technology (MACT) and health-based compliance alternative for certain threshold pollutants. We proposed these standards for industrial, commercial, and institutional boilers and process heaters on January 13, 2003 (68 FR 1660).

In the preamble for the proposed rule, we discussed our consideration of a bubbling compliance alternative and requested comment on incorporating a bubbling compliance alternative (i.e., emission averaging) into the final rule as part of EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced. (*See* 68 FR 1686.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the emissions averaging approach. We received a total of 40 public comment letters regarding the emissions averaging approach in the proposed rule during the comment period. We summarized major public comments on the proposed emissions averaging approach, along with our responses to those comments, in the preamble to the final rule (69 FR 55238) and in the comment response memorandum ''Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised) (RTC Memorandum) that was placed in the docket for the final rule.

In the final rule, we adopted an emissions averaging provision for existing large solid fuel boilers. The procedures that affected sources must use to demonstrate compliance through emissions averaging were promulgated in 40 CFR 63.7522. (*See* 69 FR 55257.) For each existing large solid fuel boiler in the averaging group, the emissions are capped at the emission level being achieved on the effective date of the final rule (November 12, 2004). Under emissions averaging, compliance must be demonstrated on a 12-month rolling average basis, determined at the end of every calendar month. If a facility uses this option, it must also develop and submit an implementation plan to the applicable regulatory authority for review and approval no later than 180 days before the date that the facility intends to demonstrate compliance.

Following promulgation of the final rule, the Administrator received petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from General Electric (GE), the Natural Resources Defense Council (NRDC), and Environmental Integrity Project (EIP).[1]

[1] In addition to the petitions for reconsideration, two petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC, Sierra Club, and EIP (No. 04–1385, D.C. Cir.) and American Municipal Power—Ohio and the Ohio cities of Dover, Hamilton, Orrville, Painesville, Shelby, and St. Marys (No. 04–1386, D.C. Cir.). The two cases have been consolidated. Eleven additional parties have filed petitions to intervene: American Home Furnishings Alliance, Council of Industrial Boiler Owners, American Forest and Paper Association, American Chemistry Council, National Petrochemical and Refiners Association, American

Under this section, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period.

GE requested that EPA reconsider portions of the emissions averaging provision that it believes could not have been practicably addressed during the public comment period. In the alternative, GE requested clarification that the final rule already allows for consolidated testing of commonly vented boilers.

By a letter dated April 27, 2005, we informed GE that we intended to grant their petition for reconsideration. We indicated in that letter that we would respond to the petition by publishing this notice of proposed rulemaking.

III. Today's Action

Today, we are granting reconsideration of the issue raised in the GE petition for reconsideration. We agree that it was impracticable for GE to raise its concern about implementation of the emissions averaging provision until after the public comment period when the final regulatory text was promulgated. Although we believe we provided adequate notice and opportunity to comment on the emissions averaging alternative, the specific regulatory text in 40 CFR 63.7522 was not included in the notice of proposed rulemaking. Thus, we believe it is appropriate to grant reconsideration to provide the public with the opportunity to comment on how the emissions averaging alternative can be applied to sources where boilers and process heaters are vented to common stacks. As a result, we are requesting comment on this issue and a proposed amendment to 40 CFR 63.7522 that would clarify the emissions averaging provision and allow consolidated testing of commonly vented boilers.

In a separate notice, we have granted reconsideration of several of the issues raised in the NRDC and EIP petition for reconsideration. (See 70 FR 36907, June 27, 2005.) In that notice, we requested comment on provisions in appendix A of subpart DDDDD and the health-based compliance alternative for total selected metals reflected in 40 CFR 63.7507(b).

Also, today we are proposing amendments to the final rule to address several issues that were raised related to applicability and implementation of the requirements in subpart DDDDD of 40 CFR part 63. The proposed amendments to the final rule address these issues, correct other inconsistencies that were discovered following promulgation, and clarify some common applicability questions.

IV. Reconsideration of Emissions Averaging Provision

Through today's notice, we request comments on how the emissions averaging compliance alternative should be implemented when boilers are vented to common stack and on the proposed amendment to 40 CFR 63.7522 addressing consolidated testing of commonly vented existing solid fuel boilers. Stakeholders who would like for us to reconsider comments relevant to this issue that they submitted to us previously should identify the relevant docket entry numbers and page numbers of their comments to facilitate expeditious review during the reconsideration process.

1. Background

In the notice of proposed rulemaking, we described approaches that we might use to implement an emissions averaging compliance alternative. (See 68 FR 1686.) We discussed an emissions averaging option that would allow owners and operators to set emissions limits for each existing boiler in the same subcategory such that if these limits are met, the total emissions from all existing boilers in the subcategory would be less than or equal to the proposed emissions limit for the subcategory. In addition, we also discussed that the emissions averaging option would not be applicable to new sources and could only be used between boilers in the same subcategory. We solicited comments on the emissions averaging option and whether EPA should include the emissions averaging option in the final rule.

In the final rule, we included an emissions averaging provision because we agreed with commenters that emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT levels. We also recognized that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and most importantly, will achieve no less emissions reductions than unit by unit implementation of the MACT requirements.

The emissions averaging provision in the final rule requires each facility that intends to utilize emissions averaging to submit an implementation plan for emissions averaging to the applicable regulatory authority for review and approval. In this implementation plan, the facility must include the identification of: (1) All units in the averaging group; (2) the control technology installed; (3) the process parameter that will be monitored; (4) the specific control technology or pollution prevention measure to be used; (5) the test plan for the measurement of particulate matter (or selected total metals), hydrogen chloride, or mercury emissions; and (6) the operating parameters to be monitored for each control device. The regulatory authority will not approve emission averaging plans containing averaging between emissions of different types of pollutants, averaging between sources in different subcategories, or averaging that includes new sources or unaffected sources.

In the final rule, we established procedures for demonstrating compliance by emissions averaging and codified them in 40 CFR 63.7522. The preamble to the final rule also contained a summary of our response to significant comments. (See 69 FR 55238.)

GE's concerns regarding the emissions averaging provision relate to the manner in which testing must be conducted to demonstrate compliance. They believe the final rule could be read to impose unreasonable limitations on the use of emissions averaging because the equations used to demonstrate compliance employ a variable defined as the emission rate for each boiler. GE is requesting that we reconsider that the final rule be amended to allow the source to conduct one test on a group of boilers that vents through a common stack rather than to require individual tests on each boiler. In the alternative, GE also requested clarification that the rule already allows for consolidated testing of commonly vented boilers.

2. Proposed Action and Request for Comment

We agree that the current language in the emissions averaging options requires testing of each individual boiler in the averaging group. However, our intent with regard to the emissions averaging option in the final rule was to provide an equivalent, more flexible, and less costly compliance alternative. Since testing emissions from a common stack for a group of boilers would be equivalent to the average emissions calculated from emissions tests on each individual boiler, we are proposing to allow testing of emissions at the common stack under specified situations. Specifically, we are

Petroleum Institute, National Oilseed Processors Association, Coke Oven Environmental Task Force, Utility Air Regulatory Group, and Alliance of Automobile Manufacturers are intervening with regard to the health-based compliance alternatives.

proposing to allow testing of a common stack only for the situations where each of the units vented to the common stack are in the existing solid fuel subcategory. This is because the emissions averaging provision in 40 CFR 63.7522 is only applicable to existing large solid fuel boilers. Therefore, testing of a common stack in these situations will result in demonstrating the average emissions from this particular averaging group of boilers, just as if each boiler was tested individually and their emissions averaged.

Allowing the testing of a common stack for only these specific situations also satisfies the criteria discussed in the preamble to the final rule (69 FR 55239) that EPA has generally imposed on the scope and nature of emissions averaging programs. These criteria include: (1) No averaging between different types of pollutants, (2) no averaging between sources that are not part of the same major source, (3) no averaging between sources within the same major source that are not subject to the same NESHAP, and (4) no averaging between existing sources and new sources. The proposed amendment fully satisfies each of these criteria.

GE is seeking clarification on two different common stack situations. In one situation, the exhaust from three existing large solid fuel boilers are combined and vented through a common emissions control system to a common stack. In the other situation, the exhaust from two existing large solid fuel boilers are each individually controlled prior to being vented to a common stack.

In the proposed regulatory provisions set forth below, we propose to treat a group of boilers that vents through a common emissions control system to a common stack as a single existing solid fuel boiler for purposes of subpart DDDDD. The common control situation is more of an applicability issue. This common control issue has been addressed in past rulemakings (e.g., Standard of Performance for Primary Aluminum Reduction Plants, 40 CFR 60.190) where the affected source was defined as an uncontrolled unit, unit which is controlled individually, or a group of units ducted to a common control system. A group of similar units ducted through a common control system would be determined to be a single controlled source for the purpose of demonstrating compliance. Thus, we are proposing this amendment to address and clarify applicability and implementation issues.

However, we propose a slightly different approach for averaging groups that vent to a common stack through more than one emissions control system. These distinct approaches are necessary to ensure that a source with more than one emissions control system can demonstrate continuous compliance at each emissions control system.

Where a group of boilers vents to a common stack through more than one emission control system, continuous compliance will be demonstrated according to the methods specified in table 8 to subpart DDDDD. If each of the boilers venting to the common stack have an applicable opacity operating limit, then a single continuous opacity monitoring system (COMS) may be located in the common stack instead of each duct to the common stack. If any of the boilers venting to the common stack do not have an applicable opacity operating limit, then the appropriate operating limit in tables 2 through 4 to subpart DDDDD that applies to each boiler must be met.

Testing of the common stack must be conducted when each boiler is operated under representative testing conditions as specified in the National Stack Testing Guidance issued by EPA on February 2, 2004.

In addition, we are proposing that the common stack situations described above may be treated as a separate single emission point for purpose of including in a larger emissions averaging group with other existing large solid fuel boilers located at the facility.

We are not requesting comment on other aspects of the emissions averaging provision.

V. Proposed Clarifying Amendments and Technical Corrections

We identified minor drafting errors and inadvertent omissions after promulgation of the industrial boiler and process heater NESHAP. Thus, in addition to reconsidering the issue discussed above, we are proposing to make the following definition clarifications and corrections to 40 CFR part 63, subpart DDDDD.

A. What clarifications are proposed to the definitions?

We are proposing to insert the word ''other'' in the definitions in 40 CFR 63.7575 for ''small gaseous fuel subcategory'' and ''small liquid fuel subcategory,'' in order to make these definitions consistent with the definition for ''small solid fuel subcategory.'' This omission has caused confusion in determining the applicability of firetube boilers with heat input capacities greater than 10 million British thermal units (Btu) per hour.

In addition, we are proposing to amend the definitions in 40 CFR 63.7575 for ''large gaseous fuel subcategory,'' ''large liquid fuel subcategory,'' and ''large solid fuel subcategory'' to make them consistent with the definitions in 40 CFR 63.7575 for the various ''limited use'' subcategories. We are proposing to replace the phrase ''has an annual capacity factor of greater than 10 percent'' with the phrase ''does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent'' to clarify that only large units having a permit limitation on their annual average capacity factor of 10 percent or less are considered in the limited use subcategories.

We are also proposing to amend the definitions of ''firetube boiler'' and ''watertube boiler'' in 40 CFR 63.7575 to address boilers designed with both firetubes and watertubes, commonly referred to as ''hybrid boilers.'' EPA is aware of three ''hybrid boiler'' designs: (1) Watertube boilers that incorporate a secondary firetube section to extract additional heat from the combustion gases; (2) firetube boilers designed with watertubes that function to improve the operation and efficiency of the firetube boiler, not to increase steam generating capacity; and (3) boilers designed with both firetubes and watertubes, in which both the firetubes and watertubes function for the purpose of steam generation.

We are proposing to classify watertube boilers that incorporate firetubes for additional heat recovery as watertube boilers for the purpose of the final rule since the unit combustion zone incorporates a watertube design. As discussed in the proposal (68 FR 1671), it is the design of the boiler's combustion zone that will influence the formation of organic hazardous air pollutants (HAP) emissions and was one of the bases for creating the subcategories.

We are proposing to treat firetube boilers that are designed with watertubes that function for purposes other than for steam generation, for example to reduce maintenance, enhance efficiency, reduce emissions, or increase fuel flexibility as firetube boilers for the purpose of the final rule since the unit combustion zone incorporates a firetube design. Again, it is the design of the boiler's combustion zone that will influence the formation of organic HAP emissions and was one of the bases for creating the subcategories.

EPA is aware that there may be other hybrid designs that are not specifically

addressed by the amended definitions we are proposing today. Applicability determinations for designs other than those described above should be addressed on a case-by-case basis.

We are also proposing to add in 40 CFR 63.7575 a definition for the term ''equivalent,'' as this term is used in table 6 to subpart DDDDD, to address questions concerning what types of test methods are considered equivalent. In addition, there is some confusion regarding how the term ''equivalent,'' as used in table 6 to subpart DDDDD, is different from the terms ''alternative analytical method'' used in 40 CFR 63.7521 and ''alternative test method,'' as defined in 40 CFR 63.2 of the MACT General Provisions. This has raised the question of whether the definitions of intermediate, major, and minor changes to a test method in 40 CFR 63.90, apply in determining delegable authorities. The answer is that EPA intended for the determination of ''equivalent'' for table 6 to subpart DDDDD purposes, to be a category I authority, potentially delegable to the State. However, EPA neglected to clearly convey that message or provide a clear definition of ''equivalent'' for table 6 to subpart DDDDD purposes to assure national consistency. Because there are a large number of fuel types it is not practical to identify and list all acceptable (equivalent) combinations of methods and fuels in table 6 to subpart DDDDD. We do believe, however, that if we make mandatory the use of a voluntary consensus standard (VCS) or EPA method that states it is intended to at least match the fuel matrix (solid, liquid, or gas) central to the definition of equivalent (for table 6 to subpart DDDDD), then this can be a category I delegable authority. A negative finding of equivalent would then invoke the definitions of minor, intermediate, or major changes to a test method. Following this logic, we have developed a definition of ''equivalent'' to determine if an alternate fuel analysis procedure is equivalent for table 6 to subpart DDDDD purposes. An alternative is any deviation or modification from the published VCS or EPA method as written. These must be specifically noted and the need or reason for the alternative explained. In general, alternatives that are necessary or improve the data quality will be given priority review while those of convenience only will be reviewed as time permits. Because of the potential for a large number of sample analysis plans containing equivalent and alternative methods and procedures, we encourage the applicant to clearly denote alternative requests from equivalent requests and to provide a complete rationale in order to expedite review.

B. What are the proposed corrections?

A list of boilers and process heaters that are not subject to subpart DDDDD of 40 CFR part 63 are contained in 40 CFR 63.791. As stated in the proposal preamble, our intention was to exempt from the final rule any units that are already or will be subject to regulation for HAP under another standard. (See 69 FR 1663.) In terms of electric utility steam generating units, regulations for HAP were only under development at proposal and promulgation of subpart DDDDD of 40 CFR part 63 and, therefore, we were unable to cite the exemption for electric utility steam generating units to a specific regulation. The exemption cited in 40 CFR 63.7491(c) for electric utility steam generating units is the definition of electric utility steam generating units contained in section 112(a)(8) of the CAA. On March 29, 2005 (70 FR 15995), EPA revised the regulatory finding that it issued in December 2000, removing electric utility steam generating units from the CAA section 112 source category list. EPA instead established standards of performance for mercury from new and existing electric utility steam generating units under the authority of section 111 of the CAA. These standards of performance (subparts Da and HHHH of 40 CFR part 60) regulating mercury from electric utility steam generating units were promulgated on May 18, 2005 in the Clean Air Mercury Rule. (See 70 FR 28606.) After we promulgated that rule, it was brought to our attention that the scope of the exemption in subpart DDDDD of 40 CFR part 63 for electric utility steam generating units was unclear. Confusion has resulted because subparts Da and HHHH employ different definitions to determine applicability, consistent with the historical applicability and definition determinations under CAA section 111 and Acid Raid Programs. (See 70 FR at 28609.) Thus, to clarify applicability of the final rule, we are proposing to modify 40 CFR 63.7491(c) to exclude ''an electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) and a Mercury (Hg) Budget unit covered by 40 CFR part 60, subpart HHHH.'' The term ''electric utility steam generating unit'' is defined in 40 CFR 63.7575 of subpart DDDDD in accordance with the statutory definition in section 1121(a)(8) of the CAA.

In 40 CFR 63.7522, we inadvertently omitted the equation for determining continuous compliance with the emission limits when using emissions averaging. Under the emissions averaging provision, continuous compliance is based on a 12-month rolling average. We corrected this omission by adding equation 4A to 40 CFR 63.7522(f).

In 40 CFR 63.7525, we inadvertently omitted the requirement for installing and operation of an oxygen monitor. According to the work practice standard for carbon monoxide (CO) in table 1 to subpart DDDDD, a new affected source must correct the CO data to a certain percent oxygen. However, 40 CFR 7525(a) never explicitly states that an oxygen monitor is required. We received inquiries on whether an oxygen monitor is required to be installed if no oxygen monitor is currently in place. Since the CO standard is only applicable to new units, we assumed that all new units above 100 million Btu per hour heat input would also be subject to the new source performance standard (subpart Db of 40 CFR part 60) for industrial boilers which requires an oxygen monitor as part of its monitoring requirement. Thus, we amended 40 CFR 63.7525 to clarify that a corresponding oxygen monitor is required when a CO monitor is required.

As suggested by the American Society for Testing and Materials (ASTM), several of the listed ASTM test methods in table 6 to subpart DDDDD are being amended with updated ASTM test methods.

C. What are the Impacts Associated With the Amendments?

The proposed amendments contained in this action are corrections that are intended to clarify, but not change, the coverage of the final rule. The amendments will not affect the estimated emissions reductions or the control costs for the final rule. The clarifications and corrections should make it easier for owners and operators and for local and State authorities to understand and implement the requirements.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory

action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted for approval to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (Information Collection Request No. 2028.01 and OMB Control Number 2060–0551). The information collection requirements are not enforceable until OMB approves them.

Today's notice of reconsideration imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the notice, the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the 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.

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 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impact of today's notice of reconsideration on small entities, a small entity is defined as: (1) A small business having no more than 500 to 750 employees, depending on the business' NAICS code; (2) a small governmental jurisdiction that is a government of a city, country, 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 that is not dominant in its field.

After considering the economic impacts of today's notice of reconsideration on small entities, we certify that the notice will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the notice imposes no additional regulatory requirements on owners or operators of affected sources. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess 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 by State, local, and tribal governments, in the aggregate, or by the private section, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 that 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Although the final rule had annualized costs estimated to range from $690 to $860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), today's notice does not add new requirements that would increase this cost. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's notice of reconsideration is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are 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.''

Today's notice of reconsideration 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 the various levels of government, as specified in Executive Order 13132. The requirements discussed in today's notice will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's notice of reconsideration.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' are 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 Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's notice of reconsideration does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to today's notice of reconsideration.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect of children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's notice of reconsideration is not subject to the Executive Order because EPA does not have reasons to feel that the environmental health or safety risks associated with the emissions addressed by this notice present a disproportionate risk to children. This demonstration is based on the fact that the noncancer human health values we used in our analysis at promulgation (e.g., reference concentrations) are determined to be protective of sensitive subpopulations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by facilities that meet the eligibility criteria for the health-based compliance alternatives will be sufficiently low so as not be a concern for anyone in the population, including children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to [the product, substance or other vector proposed for regulation.]

H. 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 under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

Today's amendments involve technical standards. EPA cites the following standards in the proposed rulemaking: (1) American Society for Testing and Materials (ASTM) D2013–04, ''Standard Practice for Preparing Coal Samples for Analysis,'' (2) ASTM D2234–D2234M–03E01, ''Standard Practice for Collection of a Gross Sample of Coal,'' (3) ASTM D6721–01, ''Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydroylsis Microcoulometry,'' (4) ASTM D3173–03, ''Standard Test Method for Moisture in the Analysis Sample of Coal and Coke,'' (5) ASTM D4606–03, ''Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method,'' (6) ASTM D6357–04, ''Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry,'' (7) ASTM D6722–01, ''Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis,'' and (8) ASTM D5865–04, ''Standard Test Method for Gross Clorific Value of Coal and Coke.''

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. As assessment of these and other voluntary consensus standards is presented in the preamble to the final rule. (See 69 FR 55251, September 13, 2004.)

Table 6 to subpart DDDDD of 40 CFR part 63 list the fuel analysis methods included in the final rule. Under 40 CFR 63.7(f) in subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

List of Subject in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 21, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1, of the code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.14 is amended by adding paragraphs (b)(55) through (62) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(55) ASTM D2013–04, Standard Practice for Preparing Coal Samples for Analysis, IBR approved for Table 6 to subpart DDDDD of this part.

(56) ASTM D2234–D2234M–03E01, Standard Practice for Collection of a Gross Sample of Coal, IBR approved for Table 6 to subpart DDDDD of this part.

(57) ASTM D6721–01, Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry, IBR approved for Table 6 to subpart DDDDD of this part.

(58) ASTM D3173–03, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

(59) ASTM D4606–03, Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method, IBR approved for Table 6 to subpart DDDDD of this part.

(60) ASTM D6357–04, Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry, IBR approved for Table 6 to subpart DDDDD of this part.

(61) ASTM D6722–01, Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis, IBR approved for Table 6 to subpart DDDDD of this part.

(62) ASTM D5865–04, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

* * * * *

Subpart DDDDD—[Amended]

3. Section 63.7491 is amended by revising paragraph (c) to read as follows:

§ 63.7491 Are any boilers or process heaters not subject to this subpart?

* * * * *

(c) An electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) and a Hg Budget unit covered by 40 CFR part 60, subpart HHHH.

* * * * *

4. Section 63.7522 is amended by revising paragraphs (b) and (c) and by adding paragraphs (f)(3) and (h) through (k) to read as follows:

§ 63.7522 Can I use emission averaging to comply with this subpart?

* * * * *

(b) Separate stack requirements. For a group of two or more existing large solid fuel boilers that each vent to a separate stack, you may average particulate matter or TSM, HCl and mercury emissions to demonstrate compliance with the limits in Table 1 of this subpart if you satisfy the requirements in paragraphs (c), (d), (e), (f), and (g) of this section.

(c) For each existing large solid fuel boiler in the averaging group, the emission rate achieved during the initial compliance test for the HAP being averaged must not exceed the emission level that was being achieved on November 12, 2004 or the control technology employed during the initial compliance test must not be less effective for the HAP being averaged than the control technology employed on November 12, 2004.

* * * * *

(f) * * *

(3) Until 12 monthly emission rates have been accumulated, calculate and report only the monthly averages. Then, for each subsequent calendar month, use Equation 4A of this section to calculate the 12-month rolling average as a weighted average of the emission rate for the current month and the emission rates for the previous 11 months.

$$E_{avg} = \frac{\sum_{i=1}^{12} ER_i}{12} \qquad \text{(Eq. 4A)}$$

Where:

E_{avg} = 12-month rolling average emission rate, (pounds per million Btu heat input)

ER_i = Monthly emission rate, for month ''i'', (pounds per million Btu heat input)

* * * * *

(h) Common stack requirements. For a group of two or more existing large solid fuel boilers, each of which vents through a single common stack that does not receive emissions from units in other subcategories or nonaffected units, you may average particulate matter or TSM, HCl and mercury to demonstrate compliance with the limits in Table 1 of this subpart if you satisfy the requirements in paragraphs (i) or (j) of this section.

(i) For a group of two or more existing large solid fuel boilers, each of which vents through a common emissions control system to a common stack you may treat such averaging group as a single existing solid fuel boiler for purposes of subpart DDDDD and comply with the requirements of this subpart as if the group were a single boiler.

(j) For all other groups of boilers subject to paragraph (h) of this section, the owner or operator shall:

(1) Conduct performance tests according to procedures specified in § 63.7520 in the common stack; and

(2) Conduct monitoring, as appropriate, according to requirements specified in § 63.7525 in the common stack; and

(3) Meet the applicable operating limit specified in § 63.7540 and table 8 for each emissions control system.

(k) Combination requirements. The common stack of a group of two or more boilers subject to paragraph (h) may be treated as a separate stack for purposes of paragraph (b) of this section and included in an emissions averaging group subject to paragraph (b) of this section.

5. Section 63.7525 of subpart DDDDD is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.7525 What are my monitoring, installation, operation, and maintenance requirements?

(a) If you have an applicable work practice standard for carbon monoxide, and your boiler or process heater is in any of the large subcategories and has a heat input capacity of 100 MMBtu per hour or greater, you must install, operate, and maintain a continuous emission monitoring system (CEMS) for carbon monoxide and oxygen according to the procedures in paragraphs (a)(1) through (6) of this section by the compliance date specified in § 63.7495. The carbon monoxide and oxygen shall be monitored at the same location at the outlet of the boiler or process heater.

(1) Each CEMS must be installed, operated, and maintained according to the applicable procedures under Performance Specification (PS) 3 or 4A

of 40 CFR part 60, appendix B, and according to the site-specific monitoring plan developed according to § 63.7505(d).

* * * * *

6. Section 63.7575 of subpart DDDDD is amended as follows:

a. By adding a new definition in alphabetical order for ''Equivalent''.

b. By revising the definitions for ''Firetube boiler'', ''Large gaseous fuel subcategory'', ''Large liquid fuel subcategory'', ''Large solid fuel subcategory'', ''Small gaseous fuel subcategory'', ''Small liquid fuel subcategory'' and ''Watertube boiler''.

§ 63.7575 What definitions apply to this subpart?

* * * * *

Equivalent means the following only when this term is used in Table 6 to subpart DDDDD:

(1) An equivalent sample collection procedure means a published voluntary consensus standard or practice (VCS) or EPA method that includes collection of a minimum of three composite fuel samples, with each composite consisting of a minimum of three increments collected at approximately equal intervals over the test period.

(2) An equivalent sample compositing procedure means a published VCS or EPA method to systematically mix and obtain a representative subsample (part) of the composite sample.

(3) An equivalent sample preparation procedure means a published VCS or EPA method that: Clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix or; is cited as an appropriate sample preparation standard, practice or method for the pollutant in the chosen VCS or EPA determinative or analytical method.

(4) An equivalent procedure for determining heat content means a published VCS or EPA method to obtain gross calorific (or higher heating) value.

(5) An equivalent procedure for determining fuel moisture content means a published VCS or EPA method to obtain moisture content. If the sample analysis plan calls for determining metals (especially the mercury, selenium, or arsenic) using an aliquot of the dried sample, then the drying temperature must be modified to prevent vaporizing these metals. On the other hand, if metals analysis is done on an ''as received'' basis, a separate aliquot can be dried to determine moisture content and the metals concentration mathematically adjusted to a dry basis.

(6) An equivalent pollutant (mercury, TSM, or total chlorine) determinative or analytical procedure means a published VCS or EPA method that clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix and has a published detection limit equal or lower than the methods listed in Table 6 to subpart DDDDD for the same purpose.

* * * * *

Firetube boiler means a boiler in which hot gases of combustion pass through the tubes and water contacts the outside surfaces of the tubes. Firetube boilers that incorporate watertubes into their design for purposes other than for steam generation, for example, to reduce maintenance, enhance efficiency, reduce emissions, or increase fuel flexibility are considered to be firetube boilers.

* * * * *

Large gaseous fuel subcategory includes any watertube boiler or process heater that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment or gas supply emergencies, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent.

Large liquid fuel subcategory includes any watertube boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent. Large gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies are not included in this definition.

Large solid fuel subcategory includes any watertube boiler or process heater that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent.

* * * * *

Small gaseous fuel subcategory includes any firetube boiler that burns gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment or gas supply emergencies, and any other boiler or process heater that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment or gas supply emergencies, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input.

Small liquid fuel subcategory includes any firetube boiler that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, and any other boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input. Small gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies are not included in this definition.

* * * * *

Watertube boiler means a boiler in which water passes through the tubes and hot gases of combustion pass over the outside surface of the tubes. Watertube boilers that incorporate a secondary firetube section to extract additional heat from the combustion gases are considered to be watertube boilers. Boilers that incorporate both firetubes and watertubes into their design, such that primary function of both the firetubes and watertubes is steam generation, are considered watertube boilers for the purpose of this subpart.

* * * * *

7. Table 6 to subpart DDDDD is revised to read as follows:

TABLE 6 TO SUBPART DDDDD OF PART 63.—FUEL ANALYSIS REQUIREMENTS

[As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources:]

To conduct a fuel analysis for the following pollutant...	You must...	Using...
1. Mercury	a. Collect fuel samples	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03E01 (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	b. Composite fuel samples	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871–82 (1998) (IBR, see § 63.14(b)) or equivalent.
	f. Measure mercury concentration in fuel sample.	ASTM D6722–01 (for coal) (IBR, see § 63.14(b)) or SW–846–7471A (for solid samples) or SW–846–7470A (for liquid samples) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	
2. Total Selected metals	a. Collect fuel samples	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03E01 (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	b. Composite fuel samples	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (for biomass) (IBR, see § 63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871 (IBR, see § 63.14(b)) or equivalent.
	f. Measure total selected metals concentration in fuel sample.	SW–846–6010B or ASTM D6357–04 (for arsenic, beryllium, cadmium, chromium, lead, manganese, and nickel in coal) and ASTM D4606–03 (for selenium in coal) (IBR, see § 63.14(b)) or ASTM E885–88 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	
3. Hydrogen chloride	a. Collect fuel samples	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03E01 (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	b. Composite fuel samples	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples	SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871–82 (1998) (IBR, see § 63.14(b)) or equivalent.

TABLE 6 TO SUBPART DDDDD OF PART 63.—FUEL ANALYSIS REQUIREMENTS—Continued

[As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources:]

To conduct a fuel analysis for the following pollutant...	You must...	Using...
	f. Measure chlorine concentration in fuel sample.	SW–846–9250 or ASTM D6721–01 (for coal) or ASTM E776–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	

[FR Doc. 05–21531 Filed 10–28–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 412

[OW–2005–0036; FRL–OW–2005–0000; FRL–7990–5]

Notice of Availability of Correspondence Regarding Revisions to the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This notice announces the availability of correspondence and the Environmental Protection Agency's (EPA's) response to inquiries regarding the Concentrated Animal Feeding Operations (CAFOs) regulations. EPA received inquiries on the permit application date in the CAFOs regulation and whether, in response to the February 28, 2005, decision by the Second Circuit Court of Appeals issued in *Waterkeeper* v. *EPA*, 399 F.3d 486 (2nd Cir. 2005), the permit application date may be extended. The 2003 CAFO rule (68 FR 7176) (''National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations''), hereafter known as the ''2003 CAFO rule,'' contains the requirement that by February 13, 2006, all newly defined CAFOs must apply for a National Pollutant Discharge Elimination System (NPDES) permit. The 2003 CAFO rule also requires that all CAFOs develop and implement a Nutrient Management Plan by December 31, 2006.

EPA is in the process of developing options for revising the 2003 CAFO rule to comply with the Second Circuit Court of Appeals' decision. The schedule for final action provides for a full and ample opportunity for public notice and comment, but it is not consistent with completion by February 13, 2006. As a result, EPA will propose to extend the permit application date of February 13, 2006, and the Nutrient Management Plan due date of December 31, 2006, in a separate NPRM. This second action will be proposed and finalized by February 13, 2006. The correspondence and the EPA's response have been added to the rulemaking docket and are available to the public.

ADDRESSES: Copies of the correspondence may be obtained from EPA's Office of Water docket identified by Docket ID No. OW–2005–0036, by one of the following methods:

(1) Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket.

(2) E-mail: *ow-docket@epa.gov*, Attention Docket ID No. OW–2005–0036.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Categories and entities interested in today's notice include:

Category	Examples of interested entities
State/Local/Tribal Government Industry	Operators of animal production operations that meet the definition of a CAFO.
	Beef cattle feedlots (including veal).
	Beef cattle ranching and farming.
	Hogs.
	Sheep.
	General livestock except dairy and poultry.
	Dairy farms.
	Broilers, fryers, and roaster chickens.
	Chicken eggs.
	Turkey and turkey eggs.
	Poultry hatcheries.
	Poultry and eggs.
	Ducks.
	Horses and other equines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that may be interested in this notice.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for the Revisions to the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations under Docket ID No. OW–2005–0036. The official public docket consists of the correspondence received on the CAFO 2003 rule and the February 28, 2005, decision by the Second Circuit Court of Appeals issued in *Waterkeeper* v. *EPA*, and EPA's response to this correspondence. 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 Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view these documents materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of $25.00.

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 scientific views, 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.

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/.*

Dated: October 25, 2005.

Brent Fewell,

Acting Assistant Administrator Office of Water.

[FR Doc. 05–21527 Filed 10–28–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15245]

RIN 2105–AD55

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation is proposing to amend certain provisions of its drug and alcohol testing procedures to change instructions to laboratories, medical review officers, and employers with respect to adulterated, substituted, diluted, and invalid specimen results. These proposed changes are intended to create consistency with specimen validity requirements established by the U.S. Department of Health and Human Services and to modify some measures taken in two of our own interim final rules. This NPRM also proposes to make specimen validity testing mandatory within the regulated transportation industries.

DATES: Comments to the notice of proposed rulemaking should be submitted by December 30, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number 15245] 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 am and 5 pm, 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 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 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Deputy Director (S–1), Office of Drug and Alcohol Policy and Compliance, 400 Seventh Street, SW., Washington, DC 20590; telephone number 202–366–3784 (voice), 202–366–3897 (fax), or *jim.swart@dot.gov (e-mail).*

SUPPLEMENTARY INFORMATION:

Purpose

In its final rule of December 2000 [65 FR 79526], the U.S. Department of Transportation (DOT) made specimen validity testing (SVT) mandatory for the transportation industry contingent upon U.S. Department of Health and Human Services (HHS) publishing its Mandatory Guidelines on SVT. In late 2001, the DOT amended part 40 [66 FR 41952, August 9, 2001] to remove the mandatory requirement because HHS had not finalized its Mandatory Guidelines regarding SVT. We said that SVT would remain authorized but not required.

On April 13, 2004, HHS published a **Federal Register** notice revising its Mandatory Guidelines [69 FR 19644] with an effective date of November 1, 2004. Among the revisions contained in the HHS Mandatory Guidelines were the requirements that laboratories modify substituted specimen and diluted specimen testing and reporting criteria. HHS revised laboratory requirements for adulterated specimen testing. HHS also required each Federal agency to conduct specimen validity testing (SVT) to determine if urine specimens collected under HHS Federal Workplace Drug Testing Programs have been adulterated or substituted.

In an interim final rule (IFR) [69 FR 64865] published on November 9, 2004, the DOT changed a number of items in part 40 to make part 40 and the HHS Mandatory Guidelines consistent. We did this to avoid conflicting requirements that implementation of both rules would have had on laboratories and medical review officers (MROs).

In the 2004 IFR, we indicated that we intended to fully address all aspects of the HHS changes to their Mandatory Guidelines in a notice of proposed rulemaking (NPRM). We also indicated that we would also take into consideration any subsequent HHS handbook materials (*e.g.*, HHS MRO Manual) and update our cost figures for SVT in the context of making SVT mandatory. In this NPRM, we have considered the HHS Guidelines as well as the HHS MRO Manual, we propose to make SVT mandatory, and we have updated our cost figures accordingly.

In the 2004 IFR and an earlier IFR [68 FR 31626] from May 28, 2003, we solicited comments regarding SVT and substituted specimens. We will address the docket comments to both IFRs in this preamble.

Background

We issued the 2003 IFR in order to respond to scientific and medical information suggesting we modify testing criteria for some specimens that had been considered to be substituted and ultimately were treated as refusals to test. The 2003 IFR modified how MROs would deal with any substituted result with creatinine concentration greater than or equal to 2 mg/dL. It did not change the HHS substitution criteria that we had used.

In the 2004 IFR, we changed a number of items in part 40 to harmonize part 40 and the new HHS Mandatory Guidelines on SVT to avoid a number of inconsistent requirements that the

application of both rules would likely have created for laboratories and MROs. While the HHS Mandatory Guidelines approach to substituted test results allowed DOT to simplify its guidance to MROs on how to deal with those results, there were several important items upon which the 2004 IFR and the HHS Guidelines differed. The most important among them was the fact that SVT, though authorized by part 40 and the IFR, was not yet required.

The 2000 part 40 anticipated that HHS would, sometime in 2001, amend its Mandatory Guidelines to establish SVT requirements for HHS-certified laboratories. When it appeared that HHS would not establish final SVT requirements in 2001, we amended part 40 to remove the mandatory requirement. This was because we believed it was advisable to wait until HHS completed its amendment before making SVT mandatory throughout the transportation industries for all DOT specimens. This NPRM proposes that SVT be made mandatory, as the DOT said it intended to do in its final rule of December 2000.

Principal Policy Issues

Harmonization With HHS

In this NPRM we have sought to harmonize our SVT proposals for laboratories, MROs, and employers with the requirements contained in the HHS Mandatory Guidelines and the HHS Medical Review Officer Manual. Here are the most noteworthy of the coordinated proposals:

1. We propose to make SVT mandatory—like it is now with the HHS Federal employee testing program.

2. We would continue to utilize HHS instructions to laboratories for establishing and directing laboratory actions for SVT. We will also continue to look to HHS for establishing appropriate cutoffs. An HHS-certified laboratory's testing equipment and SVT parameters are all HHS-driven. Our proposed tables related to adulterated and invalid laboratory results are primarily designed to explain and instruct HHS criteria rather than establish new criteria.

3. We propose to modify some of our definitions and add a few new definitions in order to make them consistent with HHS Mandatory Guidelines definitions.

4. We would continue to require laboratories to contact MROs when the laboratories find specific types of invalid results.

5. Regarding multiple results actions and reporting for primary specimens, we would generally adopt HHS procedures both for laboratories and MROs. Uniquely to part 40, we propose ''categories'' of results in order to make it easier for MROs to understand what they are to do when verifying laboratory results and reporting their verified results.

6. Regarding the numerous possible laboratory and MRO actions for split specimens, we would generally adopt HHS procedures both for laboratories and MROs. As with primary specimen results, we propose categories of split results designed to make it easier for MROs to verify and report results.

7. We propose to clarify that split testing is still not offered for invalid results. The HHS MRO Manual makes this a clear point.

8. We propose that if a second invalid result (collected under direct observation) occurs but for a different reason than the first invalid result, the verified result of the test event will be a refusal. This is also consistent with the HHS MRO Manual.

9. We propose to adopt HHS blind specimen certification criteria.

10. We propose to adopt HHS Semi-Annual Laboratory Report items.

While we have sought to harmonize our requirements with those of HHS, there remain a few issues for which we have not proposed changes to procedures that were in the 2004 IFR or in part 40. Perhaps the most important one is that we have not proposed to modify the requirement that MROs treat laboratory reported negative-dilute results with creatinine levels greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL (hereafter ''2–5mg/dL range'') as negative-dilutes that require immediate recollections under direct observation. We also have not proposed changes to the employer policy recollection option for other negative-dilutes. By contrast, HHS treats all negative-dilutes in the same fashion—a Federal agency may collect the employee's specimen under direct observation during the employee's next scheduled test event.

While we believe there are employees normally able to produce these 2–5 mg/dL range negative-dilute specimen results, there are others who cannot produce them without tampering with their specimens. We are also aware of challenges an employer faces in tracking an employee's test selection in order to have the next collection directly observed, especially as time passes between testing events. Therefore, some negative-dilutes will continue to require recollection under direct observation while others may continue to follow the employer policy options of immediate recollections not under direct observation.

There is also a difference between the HHS Mandatory Guidelines and this NPRM concerning how we intend to address an MRO's receiving a series of invalid test results from the same employee for the same testing event. If the employee presents two invalid results for the same reason or when the employee has a long-term medical condition that causes an invalid result, we propose a way to have MROs obtain a negative result if one is needed for pre-employment, return-to-duty, and follow-up testing. Also, we propose to have MROs deal with an invalid result when the specimen is also positive, substituted, and/or adulterated.

For instance, the HHS MRO Manual directs MROs to report negative results if the initial invalid results and the subsequent directly observed results are invalid for the same reason. The DOT will continue to consider these to be cancelled tests because laboratories do not report invalid-negative results. If a negative result is needed because the testing event is pre-employment, return-to-duty, or follow-up, the NPRM proposes to have the MRO determine if there is clinical evidence that the employee is an illicit drug user. We propose the same clinical evidence determination if the employee has a long-term medical condition that causes the invalid result and needs a negative result. These clinical evidence evaluations are proposed to be identical to the evaluation currently required at § 40.195 when an employee is unable to provide a sufficient amount of urine because of a permanent or long-term medical condition.

Like HHS, we would have MROs follow review procedures, as appropriate, for all laboratory reported results and to report all verified results to employers. But unlike HHS, we propose having an exception that deals with MROs reporting multiple results when one of them is invalid. The NPRM would not require an MRO to report an invalid result if the MRO also verifies any other laboratory result for the specimen as positive and/or refusal to test. MROs have told us it is problematic for them to report cancelled-invalid tests in conjunction with positives or refusals. MROs and employers have questioned whether the required re-collection under direct observation needs to take place.

We have not proposed adopting the HHS MRO Manual requirement that an MRO report a negative result if the medical explanation for a substituted specimen appears legitimate to the MRO. We believe that HHS has taken

ample measures to accurately identify substituted specimens by adjusting the creatinine concentration criteria laboratories need in order to report specimens as substituted. Part 40 will continue to have MROs report these verified results as cancelled, and report their determinations and basis for them to us. If the DOT begins to receive reports that MROs are canceling substituted specimen results because of legitimate medical reasons, we would be prepared to take measures needed for employees to obtain negative results (when negatives are needed for pre-employment, return-to-duty, and follow-up testing), perhaps by considering ways for MROs to determine if there is clinical evidence that an employee is an illicit drug user.

Making SVT Mandatory

As we said in 2000, mandatory laboratory testing for specimen validity is an appropriate response to those who would tamper with the DOT's drug test results. Again, we propose the same position. It was the correct position in 2000, and we think it is the correct position now. Over the past several years, there have been an increasing number of products designed and marketed to adulterate specimens. Currently, there are more than 400 different products available for adulterating specimens, although many contain the same component adulterants. There are also devices marketed with the promise to hide drug use by substituting ''clean'' urine for a drug user's own urine. The cheating industry is real, and we must counter it. Furthermore, cheating on a drug test through adulteration or substitution is a deliberate and direct attempt to thwart the testing process. Therefore, we are proposing to require SVT for all DOT specimens.

In their Mandatory Guidelines, HHS established SVT requirements with which laboratories must comply in order to become and remain HHS-certified. HHS has stated that their SVT standards are designed to produce the most accurate, reliable, and correctly interpreted test results. Currently, when DOT specimens are tested for validity, the SVT adheres to HHS procedural standards.

In 2000, we estimated an annual cost associated with SVT of about $1.4 million. At that time, a majority of HHS-certified laboratories were already conducting SVT. The larger laboratories, who were receiving the vast majority of transportation industry specimens, were all conducting SVT. These facts led us to estimate approximately 80% of industry specimens were being tested for specimen validity in 2000.

Because employers are deeply concerned about specimen tampering and because HHS certification relies (in part) upon a laboratory's ability to conduct SVT, we estimate that an even higher percentage of transportation industry specimens are undergoing SVT now than in 2000. We estimate that 95% of industry specimens are undergoing SVT, up from 80% in 2000.

That higher percentage coupled with the fact that fewer specimens are being collected now than were collected in 2000, leads us to believe the increased cost of requiring SVT for those specimens not currently undergoing SVT will be even less than our 2000 cost estimate. There were 6.67 million industry tests conducted in 2005, down from 7 million industry tests in 2000. Therefore, we estimate that the cost of new SVT will be about $1 million, down from the $1.4 million figure estimated in 2000.

2003 IFR Comments to the Docket

The comments to the May 28, 2003 IFR were generally supportive of the DOT's decision to modify the creatinine levels required to call a substituted specimen ''a refusal to test.'' Some supported the DOT's diligence in pursuing the subject of creatinine levels of substituted specimens, and a few others expressed the desire to do away with SVT altogether. Another commenter said we were making an accommodation for a situation that was likely not to exist, so this commenter recommended that the DOT make no change with regard to substituted specimen refusals.

Most comments to the docket expressed, in one form or another, the desire to have SVT laboratory standards developed and issued in final guidance by HHS. That way, commenters reasoned, all laboratories would be responsible for adhering to the SVT standards and would be held accountable for them. These commenters had a variety opinions related to the cutoff levels and testing ranges for SVT. Most indicated that they had provided similar comments to HHS when it proposed SVT for the Mandatory Guidelines. A few commenters discussed procedural issues for MROs in dealing with substituted specimens with creatinine in the 2–5 mg/dL range and with the period of time the IFR allowed for an employee's obtaining a required for medical evaluation.

Additionally, several comments (from an employee, two employee associations, and an attorney) expressed the desire to have the DOT remedy the records of employees whose refusals to test prior to May, 2003, had been the result of having substituted specimens. Their specific gravity levels had been in the substituted range, but their creatinine had apparently been in the 2–5 mg/dL range. At least two commenters brought up issues totally unrelated to SVT.

2004 IFR Comments to the Docket

The comments to the November 9, 2004 IFR, especially those from laboratories, were favorable about the DOT's decision to take measures to align part 40 with HHS SVT procedures. One association requested that we go further with the alignment by making SVT mandatory rather than leaving it optional. One Third Party Administrator (TPA) recommended that we provide guidance on who (*e.g.*, employer, laboratory, TPA) makes the decision to authorize SVT.

Two MROs favored the DOT's decision to keep their 2003 IFR requirement to order an immediate recollection under direct observation when a verified negative-dilute that contained creatinine in the 2–5 mg/dL range. One of those MROs spoke about what he considered the high rate of positive results for those recollections. However, one employee association was opposed to the recollection requirement for creatinine in the 2–5 mg/dL range. In fact, the association wanted the DOT to do away with the below 2 creatinine substitution criteria established by HHS, in essence wanting there to be no specimens considered substituted. Additionally, the association also expressed a desire to have the DOT expunge the records of those employees with substitution refusals prior to May, 2003. Their specific gravity levels had been in the substituted range, but their creatinine had tested in the 2–5 mg/dL range.

A laboratory requested that we require laboratories to report quantitative values on all dilutes (not just negative-dilutes) because, in the event a positive-dilute was downgraded by the MRO, the creatinine level would be important for the MRO to know. About negative-dilutes, one of the MROs suggested the category of dilute specimens having creatinine above 5 mg/dL was superfluous to the process. He suggested doing away with that category of dilute results altogether.

One of the TPAs recommended the Department find an easier way for employers to determine which laboratories use two SVT methodologies, rather than one, so that the number of invalid results would be

kept to a minimum. The TPA recommended that HHS amend its laboratory certification list to accommodate this request. Also, the TPA recommended that we use [for example], ''As an MRO, you must ''* * *'' throughout part 40 as a means of making it easier to figure out whose actions are being directed.

DOT Response to the 2003 and 2004 IFR Comments to the Docket

A major factor in the DOT's decisions to withdraw part 40's mandatory SVT (in 2001) and to create the 2003 IFR regarding MRO actions on laboratory reported substituted specimens was the fact that HHS had not finalized or updated SVT in their Mandatory Guidelines. Likewise, our decisions to establish the 2004 IFR—which served to bring part 40's SVT more in-line with the HHS—and to write this NPRM were based upon the fact that HHS finalized and published its Mandatory Guidelines effective November 1, 2004.

The HHS Mandatory Guidelines have gone far toward alleviating many of the concerns of the commenters. Specifically, IFR commenters explained that no mandatory SVT standards existed for laboratories to follow. They were also concerned that the DOT program operated with different SVT criteria than the HHS program. They noted the laboratories were not certified for their abilities to conduct SVT, and that appropriate procedures and cutoff criteria for SVT had not been established by HHS. Under the new HHS Mandatory Guidelines, HHS has set mandatory SVT standards. HHS certification depends upon laboratory SVT capabilities (among other things), and HHS has established appropriate SVT reporting criteria and cutoff levels.

Nonetheless, there will continue to be some disagreement between those who desire to have no SVT and those who believe the established SVT criteria are not stringent enough. However, we are proposing that all DOT specimens be tested for all SVT, and that those tests will follow procedures and cutoff criteria established in the HHS Mandatory Guidelines. We believe the HHS has presented well-reasoned Mandatory Guidelines and have, in the preamble to that document, forthrightly explained their ongoing review and analysis of SVT results and scientific criteria.

Also, we believe the Mandatory Guidelines work well in harmonizing with the 2000 part 40's positions to make SVT mandatory, to grant employees the right of MRO review and split specimen testing for SVT, and to provide (in certain instances) for the retesting of the primary specimen for SVT if the split specimen fails to reconfirm a drug metabolite. In addition, the Mandatory Guidelines reflect the DOT's desire (as made operational by the 2003 IFR) to change the creatinine criteria needed (in addition to the long-required specific gravity criteria) to call a specimen substituted.

IFR issues related to a laboratory's use of two SVT methodologies versus one, MRO and employer actions with negative-dilute specimens having creatinine in the 2–5 mg/dL range, and laboratories reporting creatinine values for positive-dilute specimens are fully expanded in a later section called Other NPRM Issues and Questions.

Regarding the 2004 IFR comment asking us to clarify which persons or entities currently provide authorization for a laboratory to conduct SVT under the DOT program, the authorization comes from part 40. Having said that, until part 40 makes SVT mandatory (rather than authorized), employers need to take active roles in determining the SVT they want laboratories to conduct on their behalf. The contracts between employers and laboratories are important. A laboratory needs to let employers know the SVT available to them and whether the laboratory uses two separate methodologies or one when conducting SVT. The more prudent employers will likely select a full range of SVT. The DOT appreciates the fact that most DOT-regulated specimens are undergoing SVT and would encourage employers to conduct the full range of SVT.

Finally, the DOT views the NPRM as an opportunity to consider our positions on SVT and propose modifications accordingly. It was not our intention to conduct a full review of part 40. Nor was it our intention to focus on issues that fall under the sole purviews of HHS Mandatory Guidelines (*e.g.*, the contents of the HHS laboratory listing) and DOT agency regulations (*e.g.*, the make-up of ''actual knowledge'' provisions). Therefore, we have no responses to IFR comments addressing such topics.

DOT Response to 2003 and 2004 IFR Comments Requesting That the Department Rectify Past Substitution Refusals

In both the 2003 and 2004 IFRs, there were calls for the DOT to take action to rectify what several commenters believed to be a mischaracterization of some employee refusals to test. Some of the comments suggest that we take measures to clear employee records of refusals to test if their substituted refusals showed creatinine in the 2–5 mg/dL range and those refusals were reported between September 1998 and May 2003.

For this discussion, there are several important time-lines and actions to take into consideration:

1. In September 1998, HHS established guidance regarding laboratory testing requirements for determining if a urine specimen should be reported to the MRO as being substituted. Specimens had two testing criteria in order to be reported as substituted: The specimen's creatinine level must have been 5 mg/dL or less *and* the specimen's specific gravity must have been less than or equal to 1.001 or greater than or equal to 1.020.

2. In December 2000, part 40 implemented procedures for MRO review and for split specimen testing for SVT, to include substituted specimens. Therefore, employees could show MROs that they had medical reasons for producing the result and proof they could naturally produce substituted specimens. By doing so, their results would be cancelled.

3. We issued the 2003 IFR so that MROs would not treat substituted specimens with creatinine concentration in the 2–5 mg/dL range as substituted specimens.

4. Nearly a year later, HHS revised their Mandatory Guidelines with an effective date of November 1, 2004. Among the revisions contained in the HHS Mandatory Guidelines was the requirement that laboratories modify substituted specimen criteria. As a result, there are no specimens with creatinine levels greater than or equal to 2 mg/dL being reported by laboratories as substituted.

The question now is whether we should so do something about those employees who may have been incorrectly charged with refusing their drug tests because they had substituted specimens with creatinine in the 2–5 mg/dL range. The answer is that we should.

Consequently, the DOT will issue an Informational Notice, separately from this NPRM, directing action on this matter. The notice permits employees to present information to us showing that they had a refusal to test before May 2003. The reason for the refusal must be based upon the employee's having a substituted specimen result with a creatinine concentration in the 2–5 mg/dL range. Employees will also have to present proof that they are able to produce such specimens by virtue of medical evaluations. If the DOT determines that an employee's refusal fell within these parameters and the supporting documentation shows that

the employee can produce such specimens, we will reconsider the employee's original refusal-to-test result.

Section-by-Section NPRM Issues

1. Index Changes—We would modify some existing section headings and added three new section headings in order to reflect regulation text changes. All told, eight section headings have been modified or added.

2. Definition changes—In order to align more closely our definitions section (§ 40.3) with definitions contained in the HHS Mandatory Guidelines, we propose to modify some of our existing definitions and add some new ones. Eleven definitions would be modified or added to harmonize with HHS definitions.

3. SVT Mandatory—We would make SVT mandatory by removing the option to conduct SVT (at § 40.89) and adding text requiring SVT. This text is similar to the wording that had been removed from part 40 in 2001.

4. Adulterant and Invalid Testing Cutoffs—We propose to add two tables (one at the existing § 40.95, the other at a new § 40.96) which will serve to inform MROs and others about the cutoffs and procedures laboratories are directed by HHS to use in reporting adulterants and invalid test results. However, we seek comment on whether this information will be helpful to MROs and other service agents or whether it will prove to be too much information that is too complicated to add value to the testing process.

5. Primary Specimen Laboratory Results—Laboratories are reporting and MROs are reviewing a variety of test results, to include multiple test results for the same testing event. We believe that proposed changes to § 40.97—which highlight categories of primary results—and the sections related to medical review and reporting, especially §§ 40.159(f) and 40.162, will make it easier for laboratories and MROs to understand how to deal with and report multiple test results. Comments from MROs regarding these categories of results will prove especially useful to us.

6. Reporting Invalid Results with No Employee Interview—MROs have informed us of situations in which neither they nor the employers were able to contact employees to complete the interview process for invalid results. These MROs have wondered how they are to close these results. We propose to modify § 40.133 so that invalids will be handled parallel to part 40's directives on positive, adulterated, and substituted specimens when the employee cannot be interviewed.

7. Closing the Invalid Loops—The NPRM addresses the issues an MRO faces when the employee produces a second invalid result after providing a recollection under direct observation because of an initial invalid result. The NPRM also addresses what an MRO is to do after an invalid test result is cancelled by the MRO because of a legitimate reason and a negative result is required (i.e., because the test type is pre-employment, return-to-duty, or follow-up).

a. Regarding a second invalid result for the same reason, we would amend § 40.159 to require the MRO to report the test result as canceled after confirming with the collector that the collection had been properly observed.

b. Regarding a second invalid result for a different reason, we would amend § 40.159 to require the MRO to report the test result as a refusal after confirming with the collector that the collection had been properly observed. At § 40.191, we would add this to the list of what constitutes a refusal to take a DOT test. This refusal requirement is in alignment with the HHS MRO Manual.

c. Regarding obtaining a negative result when a valid test result cannot be produced and a negative result is needed, we propose to add a new § 40.160 which requires the MRO to determine if there is clinical evidence that the individual is an illicit drug user. The evaluation requirements in this section would be parallel to existing part 40 requirements at § 40.195 when a permanent or long term medical condition is the cause of the inability to provide a sufficient specimen and a negative result is needed. Like § 40.195, the medical procedures would apply only when a negative result is needed for pre-employment, return-to-duty, and follow-up testing. Also, we seek comments about findings of illicit drug use during these medical evaluations. Currently, a finding of illicit drug use during the medical evaluation under § 40.195 causes the test to be cancelled. Should the DOT continue to require that the tests be cancelled or treat them as positives?

8. Split Specimen Results—Because of the myriad of possible test results, perhaps no section of the HHS Mandatory Guidelines is more complex than the one dedicated to split specimens. In the NPRM, we have attempted to categorize the split results—much the same way we did for the primary results—in order to make it easier for MROs to understand their responsibilities should they receive any of the more complicated split result possibilities. Comments from MROs regarding these categories of results will prove especially useful to us. Also, we seek comments on whether a table in the Appendix would help make the MRO's split specimen requirements easier to understand.

a. We would amend § 40.171 to state that there is no split specimen testing for an invalid result. This is consistent with current part 40 split request procedures and with the HHS MRO Manual.

b. We propose to amend §§ 40.177, 40.179, and 40.181 so that a provision currently contained only in § 40.177 is expanded to the adulterated and substituted split sections. Under the proposal, we would provide authorization for the split laboratory to forward the split specimen or a portion of it to another HHS-certified laboratory if the split fails to reconfirm the presence of validity criteria. We believe the provision fits well into these adulterated and substituted sections. We seek comment on whether providing authorization to the split laboratory would be sufficient, or should the DOT require them to forward the split specimen or portion of it.

c. The NPRM would simplify the many possibilities for split specimen results by placing them into five distinct categories in § 40.187. One category contains MRO actions for split specimens that reconfirm all or some of the primary specimen results. Another contains MRO actions when the split fails to reconfirm all the primary specimen results because drugs were not detected and/or validity criteria were not met. The third category outlines MRO actions when the split fails to reconfirm all the primary specimen results and the split is reported as invalid, adulterated, and/or substituted. A fourth category details actions an MRO is to take when the split fails to confirm some but not all of the primary specimen results and the split is also reported as invalid, adulterated, and/or substituted. The final category delineates MRO responsibility when the split specimen is not available for testing or there is no split laboratory available to test the split specimen.

d. The NPRM would modify § 40.187 so that if a split fails to reconfirm all primary results but is reported as substituted, the MRO will be required to follow medical review procedures for substituted specimens and offer retest of the primary specimen if the MRO verifies the result as a refusal to test. This requirement is the same as the current part 40 procedures for MRO and laboratory actions after the split fails to

reconfirm the primary results but is reported as adulterated.

9. Recollections—In §§ 40.197 and 40.201, we propose to change the regulation to clarify issues related to recollections for dilute specimens, for splits that are reported as invalid, and for a situation in which there is no split laboratory available to test the split specimen.

10. Appendix Items—At Appendix B, we propose to modify the semi-annual laboratory report so that it will have the same information required by the HHS Mandatory Guidelines. The three proposed changes, while not dramatic, will help laboratories avoid needing two different report formats, one for DOT and one for HHS. We would also amend some Appendix F citations so that they will accurately reflect NPRM text changes.

Other NPRM Issues and Questions

1. MROs, TPAs, and collectors have asked the Department to clarify issues of multiple results reporting. Multiple results can be reported by laboratories because of several reasons. For instance, two collections (one unobserved, the other observed) occur during the same testing event because the first collection was out of temperature range or showed signs of tampering; a primary specimen had multiple test results; or a test result was one that required a subsequent collection.

We believe the NPRM clearly delineates our proposals for MRO actions in multiple results situations and would like to have your comment about them. However, we also want to know your thoughts about the relative worth of continuing to have the collector send in two specimens (i.e., a temperature out of range specimen or one that showed signs of tampering and the subsequent observed specimen) instead of sending only the specimen collected under direct observation.

Do the complications caused by linking (or failure to link) the two collections outweigh the possibility that the initial specimen will be non-negative while the observed specimen will be negative or cancelled? What are some of the complications employers and MROs have experienced by having two different results on the two specimens for the same testing event? Can MROs report the verified results for two specimens for the same testing event on the same report? Do we simply need to make it clearer in part 40 that a non-negative result(s) for one specimen takes precedence over a negative or cancelled result for the other specimen?

2. Invalid result rates have risen slightly and adulterated specimen rates decreased slightly since HHS required laboratories to utilize two separate SVT methodologies before they can report results as adulterated. If the laboratory identifies the possible presence of adulterant in a urine specimen using one testing methodology, they will call the specimen invalid. This does not apply to pH testing using a pH meter for both the initial and confirmation tests. Please provide us with your comments on the benefits of requiring all laboratories conducting DOT testing to utilize two methodologies for SVT (except pH) or for directing employers to use only laboratories that employ two methodologies. What will be the associated costs to laboratories and employers for requiring laboratories to utilize two methodologies?

For invalid results, are required recollections under direct observation timely enough to identify drug use? Before laboratories report invalid results, are they contacting MROs (as required by the DOT and HHS) to discuss if sending the specimen to another HHS-certified laboratory will be useful?

3. We propose no change to the 2004 IFR in the treatment of negative-dilute specimens with creatinine in the 2–5 mg/dL range as needing to be recollected under direct observation. The result of the second specimen will continue to be the result of record even if it is again negative-dilute. MROs have informed us that a number of the recollected observed specimens have produced positive results. Some of the reports we have received indicate that while some employees can normally produce specimens with creatinine in the 2–5 mg/dL range, others cannot achieve those results without tampering with their specimens. We are interested in your comments as to whether the DOT should continue to require recollection under direct observation for these negative-dilute results.

Are the negative-dilute recollections under direct observation yielding results that show employee drug use? Given the threat to public safety, what percentage of positive results on these recollections would be considered too low to justify conducting them?

4. Neither DOT nor HHS has required laboratories to report numerical values for creatinine and specific gravity for positive-dilute specimens, like we do for negative-dilute results. When MROs downgrade positive results to negative based upon legitimate medical reasons for these positive-dilute specimens, there is no additional MRO action because the dilute numerical values are not reported. Therefore, employers are not able to take the additional recollection actions afforded other negative-dilute specimen results.

Should MROs have the same reporting responsibilities for downgraded negative-dilute results as they have for any other negative-dilute result? Should employers have the same responsibilities to recollect under direct observation when the creatinine concentration is in the 2–5 mg/dL range or the same recollection options if creatinine is above 5 mg/dL?

5. Realistic-looking prosthetic devices which hold and heat urine (or water mixed with powdered urine) are available for purchase and are known to have been used during observed collections. They are available in a variety of colors making them difficult to detect. We are interested in your comments as to the appropriateness of having a collector make sure that the employee is not using a prosthetic device during an observed collection.

For example, would it be appropriate to require that collectors and observers, as appropriate, check for these devices by having male employees lower their pants and underwear just before observed collections take place? What should be the consequence if a device is found?

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 et seq. and the Department of Transportation Act (49 U.S.C. 322).

This rule is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. It proposes modifications to our overall part 40 procedures and is intended to further align our laboratory and MRO procedures with those requirements that are being directed by HHS. Their economic effects will be negligible. Consequently, the DOT certifies, under the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

In the 2000 part 40, we estimated that approximately 80% of industry specimens were being tested for SVT and that the costs associated with making SVT mandatory would be about $1.4 million annually. Current estimates are that 95% of industry specimens are already undergoing SVT on a voluntary basis. This higher percentage, coupled with the fact that fewer specimens are being collected now than were collected in 2000, leads us to believe the

incremental cost of SVT for those specimens not currently undergoing SVT will be even less than our 2000 cost estimate. There were 6.67 million industry tests conducted in 2005, down from 7 million industry tests in 2000.[1] Therefore, we estimate that the annual cost of new SVT will be about $1 million.

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.*

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Dated: October 21, 2005.

Norman Y. Mineta,

Secretary of Transportation.

49 CFR Subtitle A—Authority and Issuance

For reasons discussed in the preamble, the Department of Transportation proposes to amend part 40 of Title 49 Code of Federal Regulations, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1–2. The authority citation for 49 CFR Part 40 continues to read as follows:

Authority: 40 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

3. Section 40.3 is proposed to be amended by revising the definitions of ''adulterated specimen,'' ''confirmation (or confirmatory) drug test,'' ''confirmation (or confirmatory) validity test,'' ''dilute specimen,'' ''initial drug test,'' ''initial validity test,'' ''invalid result,'' and ''substituted specimen'' and adding definitions for ''limit of detection,'' ''non-negative specimen,'' ''oxidizing adulterant,'' and ''screening test'' in alphabetical order, all to read as follows:

§ 40.3 What do the terms in this regulation mean?

* * * * *

Adulterated specimen. A urine specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration.

* * * * *

Confirmatory drug test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

Confirmatory validity test. A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

* * * * *

Dilute specimen. A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

* * * * *

Initial drug test (also known as a Screening drug test). An immunoassay test to eliminate ''negative'' urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

Initial validity test. The first test used to determine if a urine specimen is adulterated, diluted, or substituted.

Invalid result. Refers to the result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

* * * * *

Limit of Detection (LOD). The lowest concentration at which an analyte can be reliably shown to be present under defined conditions.

* * * * *

Non-negative specimen. A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

* * * * *

Oxidizing adulterant. A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test. Examples of these agents include, but are not limited to, nitrites, pyridinium chlorochromate, chromium (VI), bleach, iodine, halogens, peroxidase, and peroxide.

* * * * *

Screening drug test. See Initial drug test definition above.

* * * * *

Substituted specimen. A specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

* * * * *

4. Section 40.23 is proposed to be amended by revising paragraph (f) introductory text and adding paragraph (f)(5), to read as follows:

§ 40.23 What actions do employers take after receiving verified test results?

* * * * *

(f) As an employer who receives a drug test result indicating that the employee's specimen was cancelled because it was invalid and that a second collection must take place under direct observation—

* * * * *

(5) You must ensure that the collector conducts the collection under direct observation.

* * * * *

5. Section 40.83 is proposed to be amended by revising paragraph (g)(2) to read as follows:

§ 40.83 How do laboratories process incoming specimens?

* * * * *

(g) * * *

(2) If the problem(s) is not corrected, you must reject the test and report the result in accordance with § 40.97(a)(3).

* * * * *

6–7. Section 40.89 is proposed to be amended by revising paragraph (b) to read as follows:

§ 40.89 What is validity testing, and are laboratories required to conduct it?

* * * * *

(b) As a laboratory, you must conduct validity testing.

8. Section 40.95 and its heading are proposed to be revised to read:

§ 40.95 What are the adulterant cutoff concentrations for initial and confirmation tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for the initial and

[1] The lower number of tests may result from two factors. First, the 2000 number was an estimate, while the 2005 number is based on actual reporting. It is possible that the 2000 number was on the high side. Second, the operating administrations believe that employment and turnover in some industries (e.g., the motor carrier industry) may have declined in recent years, resulting in fewer tests.

confirmation adulterant tests. The table follows:

Adulterant test	Initial test	Confirmation test
(1) pH	Less than 3 or greater than 11	Less than 3 or greater than 11.
(2) Nitrite	Greater than 500 mcg/mL	Greater than 500 mcg/mL.
(3) Presence of Chromium (VI).	Greater than or equal to 50 mcg/mL	Chromium (VI) concentration greater than or equal to the Level of Detection (LOD).
(4) Presence of Halogen	Greater than or equal to 200 mcg/mL nitrite equivalent cutoff or Greater than or equal to 50 mcg/mL Chromium (VI) equivalent cutoff or Halogen concentration greater than or equal to the LOD.	Specific halogen concentration greater than or equal to the LOD.
(5) Presence of Glutaraldehyde.	Aldehyde present or Characteristic immunoassay response on drug test	Glutaraldehyde concentration greater than or equal to the LOD.
(6) Presence of Pyridine	Greater than or equal to 200 mcg/mL nitrite equivalent cutoff or Greater than or equal to 50 mcg/mL Chromium (VI) equivalent cutoff or Greater than or equal to 50 mcg/mL Chromium (VI) concentration.	Pyridine concentration greater than or equal to the LOD.
(7) Presence of Surfactant (dodecylbenzene sulfonate-equivalent).	Greater than or equal to 100 mcg/mL	Greater than or equal to 100 mcg/mL.
(8) Presence of other adulterant.	Greater than or equal to the LOD	Greater than or equal to the LOD.

(b) As a laboratory, you must report results at or above the cutoffs (or for pH, at or above or below the values, as appropriate) as adulterated and provide the numerical values that support the adulterated result.

9. A new § 40.96 is proposed to be added, to read as follows:

§ 40.96 What criteria do laboratories use to establish that a specimen is invalid?

(a) As a laboratory, you must use the invalid test result criteria displayed in the following table. The table follows:

Invalid test category	Initial test	Confirmation test
(1) Creatinine & Specific Gravity.	Creatinine less than 2 mg/dL and specific gravity is greater than 1.0010 but less than 1.0200 or Specific gravity is less than or equal to 1.0010 and creatinine is greater than or equal to 2 mg/dL.	Creatinine less than 2 mg/dL and specific gravity is greater than 1.0010 but less than 1.0200 Specific gravity is less than or equal to 1.0010 and creatinine is greater than or equal to 2 mg/dL.
(2) pH	Greater than or equal to 3 and less than 4.5 using a colorimetric pH test or pH meter or Greater than or equal to 9 and less than 11 using a colorimetric pH test or pH meter.	Greater than or equal to 3 and less than 4.5 using a pH meter. Greater than or equal to 9 and less than 11 using a pH meter.
(3) Nitrite	Greater than or equal to 200 mcg/mL using a nitrite colorimetric test or Greater than or equal to the equivalent of 200 mcg/mL nitrite using a general oxidant colorimetric test or Greater than or equal to the equivalent of 200 mcg/mL using a general oxidant colorimetric test.	Greater than or equal to 200 mcg/mL but less than 500 mcg/ml using a different confirmatory test. Greater than or equal to 200 mcg/mL but less than 500 mcg/mL using the same general oxidant colorimetric test. Greater than or equal to 200 mcg/mL but less than 500 mcg/ml using a different confirmatory test.
(4) Chromium (VI)	Greater than or equal to 50 mcg/mL using a chromium (VI) colorimetric test.	Greater than or equal to 50 mcg/mL using the same chromium (VI) colorimetric test.
(5) Halogen	Greater than or equal to the LOD using a hologen colorimetric test or Odor of the specimen	Greater than or equal to the LOD using the same halogen test colorimetric test. Greater than or equal to the LOD using a halogen colorimetric test.
(6) Glutaraldehyde	Aldehyde present using an aldehyde test or Characteristic immunoassay response on initial drug test.	Aldehyde present using the same aldehyde test. Characteristic immunoassay response on confirmatory drug test.
(7) Oxidizing Adulterant	Greater than or equal to 200 mcg/mL nitrite-equivalent using a general oxidant colorimetric test or Greater than or equal to 50 mcg/mL chromium (VI)-equivalent using a general oxidant colorimetric test or Greater than or equal to the LOD halogen concentration using a general oxidant colorimetric test.	Greater than or equal to 200 mcg/mL nitrite-equivalent using the same general oxidant colorimetric test. Greater than or equal to 50 mcg/mL chromium (VI)-equivalent using the same general oxidant colorimetric test. Greater than or equal to the LOD halogen concentration using the same general oxidant colorimetric test.
(8) Surfactant	Greater than or equal to 100 mcg/ml dodecylbenzene sulfonate-equivalent using a surfactant colorimetric test or	Greater than or equal to 100 mcg/ml dodecylbenzene sulfonate-equivalent using a the same surfactant colorimetric test.

Invalid test category	Initial test	Confirmation test
	Foam/shake test	Greater than or equal to 100 mcg/ml dodecylbenzene sulfonate-equivalent using a surfactant colorimetric test.
(9) Interference on immunoassay drug tests.	Valid drug test cannot be obtained	Valid drug test cannot be obtained.
(10) Interference with the GC/MS drug confirmation assay.	No interfering substance can be identified	No interfering substance can be identified.
(11) Physical appearance of the specimen is such that it may damage laboratory equipment..		
(12) Physical appearance of Bottles A and B are clearly different and Bottle A result is as stated in 1 through 11, as appropriate, on this table..		

(b) To obtain one of the invalid results outlined at 1 through 10 of this table, as a laboratory, you must use two separate aliquots—one for the initial test and another for the confirmation test.

(c) For a specimen having an invalid result for one of the reasons outlined at 4 through 12 of this table, as a laboratory, you must contact the MRO to discuss whether sending the specimen to another HHS certified laboratory for testing would be useful in being able to report a positive or adulterated result.

(d) As a laboratory, you must report the reason a test result is invalid.

10. Section 40.97 is proposed to be amended by adding the words, ''*and Rejected for Testing*'' between ''*Non-negative*'' and ''*results*'' at paragraph (b)(2) and by revising paragraph (a) to read as follows:

§ 40.97 What do laboratories report and how do they report it?

(a) As a laboratory, you must report the results for each primary specimen. The result of a primary specimen will fall into one of three categories. They are as follows:

(1) *Category 1:* Negative Results. When a specimen is found to be negative, as a laboratory, you must report the test result as being one of the following, as appropriate:

(i) Negative, or

(ii) Negative-dilute, with numerical values for creatinine and specific gravity.

(2) *Category 2:* Non-negative Results. When a specimen is found to be non-negative, as a laboratory, you must report the test result as being *one or more* of the following, as appropriate:

(i) Positive, with drug(s)/metabolite(s) noted;

(ii) Positive-dilute, with drug(s)/metabolite(s) noted, with numerical values for creatinine and specific gravity;

(iii) Adulterated, with adulterant(s) noted, with numerical values (when applicable), and with remarks(s);

(iv) Substituted, with numerical values for creatinine and specific gravity; or

(v) Invalid result, with remark(s).

(3) *Category 3:* Rejected for Testing. When a specimen is rejected for testing, as a laboratory you must report the result as being Rejected for Testing, with remark(s).

* * * * *

11. Section 40.103 is proposed to be amended by removing the word ''blank'' and adding in its place the word ''negative'' in paragraph (c) introductory text, by revising paragraphs (c)(1) through (5), and removing paragraphs (c)(6) to read as follows:

§ 40.103 What are the requirements for submitting blind specimens to a laboratory?

* * * * *

(c) * * *

(1) All negative, positive, adulterated, and substituted blind specimens you submit must be certified by the supplier and must have supplier-provided expiration dates.

(2) Negative specimens must be certified by immunoassay and GC/MS to contain no drugs.

(3) Drug positive blind specimens must be certified by immunoassay and GC/MS to contain a drug(s)/metabolite(s) between 1.5 and 2 times the initial drug test cutoff concentration.

(4) Adulterated blind specimens must be certified to be adulterated with a specific adulterant using appropriate confirmatory validity test(s).

(5) Substituted blind specimens must be certified for creatinine concentration and specific gravity to satisfy the criteria for a substituted specimen using confirmatory creatinine and specific gravity tests, respectively.

* * * * *

§ 40.105 [Amended]

12. Section 40.105 is proposed to be amended by adding in paragraph (c) the words ''adulterated, or substituted result'' after the word ''positive,'' and before the word ''you'.

13. Section 40.129 is proposed to be amended by revising the section heading and paragraph (a)(5) to read as follows:

§ 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug test results?

(a) * * *

(5) Verify the test result, consistent with the requirements of §§ 40.135–40.145, 40.159, and 40.160, as:

(i) Negative; or

(ii) Cancelled; or

(iii) Positive, and/or refusal to test because of adulteration or substitution.

* * * * *

14. Section 40.131 is proposed to be amended by revising the section heading to read as follows:

§ 40.131 How does the MRO or DER notify an employee of the verification process after laboratory confirmed non-negative drug test results?

* * * * *

15. Section 40.133 is proposed to be amended by revising the section heading, redesignating paragraphs (b) and (c) as (c) and (d), respectively, revising them, and adding paragraph (b) to read as follows:

§ 40.133 Under what circumstances may the MRO verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled-invalid, without interviewing the employee?

* * * * *

(b) As the MRO, you may verify a test result as cancelled-invalid (with instructions to recollect immediately under direct observation) without interviewing the employee, as provided at § 40.159, if:

(1) The employee expressly declines the opportunity to discuss the test with you;

(2) If the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee; or

(3) If neither you nor the DER, after making all reasonable efforts, has been able to contact the employee within ten days of the date on which you received the confirmed invalid test result from the laboratory.

(c) As the MRO, after you verify a test result as a positive or refusal to test or as a cancelled-invalid result under this section, you must document the date and time and reason, following the instructions in § 40.163, and, for a cancelled-invalid result, at § 40.159(a)(5)(i).

(d) As the MRO, after you have verified a test result under this section and reported the result to the DER, you must allow the employee to present information to you within 60 days of the verification documenting that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided. On the basis of such information, you may reopen the verification, allowing the employee to present information concerning whether there is a legitimate medical explanation of the confirmed test result.

16. Section 40.149 is proposed to be amended by revising the section heading, removing the words ''positive or refusal to test'' in paragraph (a), and removing, in paragraph (a)(1), the reference to ''§ 40.133(c)'' and adding in its place ''§ 40.133(d)'' to read as follows:

§ 40.149 May the MRO change a verified drug test result?

* * * * *

17. Section 40.155 is proposed to be amended by adding paragraph (d) to read as follows:

§ 40.155 What does the MRO do when a negative or positive test result is also dilute?

* * * * *

(d) If the employee's recollection under direct observation, in paragraph (c) of this section, results in another negative-dilute, as the MRO, you must:

(1) Obtain verification from the collector that the recollection was directly observed.

(2) If the recollection was directly observed, report this result to the DER as a negative-dilute result.

(3) If the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.

18. Section 40.159 is proposed to be amended by revising paragraphs (a)(1) through (3), adding paragraphs (a)(4)(iii), and (d) through (f) to read as follows:

§ 40.159 What does the MRO do when a drug test is invalid?

(a) * * *

(1) Discuss the laboratory results with the certifying scientist to determine if the primary specimen should be tested at another HHS certified laboratory. If the laboratory did not carried out its requirements to contact you at §§ 40.91(e) and 40.96(c), you must contact the laboratory.

(2) If you and the laboratory have determined that no further testing is necessary, contact the employee and inform the employee that the specimen was invalid. In contacting the employee, use the procedures set forth in § 40.131.

(3) After explaining the limits of disclosure (see §§ 40.135(d) and 40.327), you must determine if the employee has a medical explanation for the invalid result. You should inquire about the medications the employee may have taken.

(4) * * *

(iii) If a negative test result is required and the medical explanation concerns a situation in which the employee has a permanent or long-term physiological or anatomic abnormality that precludes him or her from providing a valid specimen, as the MRO, you must follow the procedures outlined at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.

* * * * *

(d) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for the same reason reported for the first specimen, as the MRO, you must:

(1) Obtain verification from the collector that the recollection was directly observed.

(2) If the recollection was directly observed, document that the employee had another specimen with an invalid result.

(3) Follow the recording and reporting procedures at (a)(4)(i) and (ii) of this section.

(4) If a negative result is required (*i.e.*, pre-employment, return-to-duty, or follow-up tests), follow the procedures at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.

(5) If the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.

(e) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for a different reason reported for the first specimen, as the MRO, you must report the test result as being a refusal.

(f) If, as the MRO, you receive a laboratory invalid result in conjunction with a positive, adulterated, and/or substituted result and you verify any of those results as being a positive and/or refusal to test, you do not report the cancelled-invalid result unless the split specimen fails to reconfirm the result(s) of the primary specimen.

19. Section 40.160 is proposed to be added to read as follows:

§ 40.160 What does the MRO do when a valid test result cannot be produced and a negative result is required?

(a) If a valid test result cannot be produced and a negative result is required, (under § 40.159 (a)(4)(iii) and (d)(4)), as the MRO, you must determine if there is clinical evidence that the individual is an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician (if appropriate).

(b) If you do not personally conduct the medical evaluation, as the MRO, you must ensure that one is conducted by a licensed physician acceptable to you.

(c) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (*e.g.*, blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.

(d) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report the result to the employer as a negative test with written notations regarding the medical examination. The report must also state why the medical examination was required (*i.e.*, either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted another invalid result for the same reason, as appropriate) and for the determination that no signs and symptoms of drug use exist.

(1) Check ''Negative'' (Step 6) on the CCF.

(2) Sign and date the CCF.

(e) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding results of the medical examination. The report must also state why the medical examination was required (*i.e.*, either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted another invalid result for the same reason, as appropriate) and for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (*i.e.*, the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).

20. Section 40.162 is proposed to be added to read as follows:

§ 40.162 What must MROs do with multiple verified results for the same testing event?

(a) If the testing event is one in which there was one specimen collection with multiple verified non-negative results, as the MRO, you must report them all to the DER. For example, if you verified the specimen as being positive for marijuana and cocaine and as being a refusal to test because the specimen was also adulterated, as the MRO, you would report the positives and the refusal to the DER.

(b) If the testing event was one in which two separate specimen collections (*e.g.*, a specimen out of temperature range and the subsequent observed collection) were sent to the laboratory, as the MRO, you must:

(1) If both specimens were verified negative, report the result as negative.

(2) If either of the specimens was verified negative and the other was verified non-negative(s), report the non-negative result(s). For example, if you verified one specimen as negative and other as a refusal to test because the specimen was substituted, as the MRO you would report the only the refusal to the DER.

(3) If both specimens were verified non-negative, report all of the non-negative results. For example, if you verified one specimen as positive and the other as a refusal to test because the specimen was adulterated, as the MRO you would report the positive and the refusal results to the DER.

(c) As an exception to paragraphs (a) and (b) of this section, as the MRO you must follow procedures at § 40.159(f)when any verified non-negative result is also invalid.

21. Section 40.171 is proposed to be amended by revising paragraph (a) to read as follows:

§ 40.171 How does an employee request a test of a split specimen?

(a) As an employee, when the MRO has notified you that you have a verified positive drug test and/or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen. There is no split specimen testing for an invalid result.

* * * * *

22. Section 40.177 is proposed to be amended by revising paragraph (d) to read as follows:

§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

* * * * *

(d) In addition, if the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported in the primary specimen, you may transmit the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

23. Section 40.179 is proposed to be amended by revising the section to read as follows:

§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?

(a) As the laboratory testing the split specimen, you must test the split specimen for the adulterant detected in the primary specimen, using the criteria of § 40.95, just as you would do for a primary specimen.

(b) In addition, if the test fails to reconfirm validity criteria reported in the primary specimen, you may transmit the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

24. Section 40.181 is proposed to be amended by revising the section to read as follows:

§ 40.181 What does the second laboratory do with the split specimen when it is tested to reconfirm a substituted test result?

(a) As the laboratory testing the split specimen, you must test the split specimen using the criteria of § 40.93(b), just as you would do for a primary specimen.

(b) In addition, if the test fails to reconfirm validity criteria reported in the primary specimen, you may transmit the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

25. Section 40.183 is proposed to be amended by revising paragraph (a), removing paragraph (b), and re-designating paragraph (c) as paragraph (b), to be read as follows:

§ 40.183 What information do laboratories report to MROs regarding split specimen results?

(a) As the laboratory responsible for testing the split specimen, you must report split specimen test results by checking the ''Reconfirmed'' box and/or the ''Failed to Reconfirm'' box (Step 5(b)) on Copy 1 of the CCF, as appropriate, and by providing clarifying remarks using current HHS Mandatory Guidelines requirements.

* * * * *

26. Section 40.187 is proposed to be amended by revising the section to read as follows:

§ 40.187 What does the MRO do with split specimen laboratory results?

As the MRO, the split specimen laboratory results you receive will fall into five categories. You must take the following action, as appropriate, when a laboratory reports split specimen results to you.

(a) *Category 1:* The laboratory reconfirmed all or some of the primary specimen results.

(1) As the MRO, you must report to the DER and employee which result(s) was/were reconfirmed.

(2) In the case of a reconfirmed positive test(s) for drug(s) or drug metabolite(s), the positive is the final result.

(3) In the case of a reconfirmed adulterated or substituted result, the refusal to test is the final result.

(4) In the case of combination positive and refusal to test results, the final result is both positive and refusal to test.

(b) *Category 2:* The laboratory failed to reconfirm all of the primary specimen results because, as appropriate, drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met.

(1) As the MRO, you must report to the DER and the employee that the test must be cancelled.

(2) As the MRO, you must inform ODAPC of the failure to reconfirm using the format in Appendix D to this part.

(3) In a case where the split failed to reconfirm because the substitution

criteria were not met because the split specimen creatinine concentration was greater than 2mg/dL but less than or equal to 5mg/dL, as the MRO, you must, in addition to steps at (b)(1) and (2) of this paragraph, direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.

(c) *Category 3:* The laboratory failed to reconfirm all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted.

(1) In the case where the laboratory failed to reconfirm all of the primary specimen results and the split was reported as invalid, as the MRO, you must:

(i) Report to the DER and the employee that the test must be cancelled and the reason for cancellation.

(ii) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.

(iii) Inform ODAPC of the failure to reconfirm using the format in Appendix D to this part.

(2) In the case where the laboratory failed to reconfirm any of the primary specimen results, and the split was reported as adulterated and/or substituted, as the MRO, you must:

(i) Contact the employee and inform the employee that the laboratory has determined that his or her split specimen is adulterated and/or substituted, as appropriate.

(ii) Follow the procedures of § 40.145 to determine if there is a legitimate medical explanation for the laboratory finding of adulteration and/or substitution, as appropriate.

(iii) If you determine that there is a legitimate medical explanation for the adulterated and/or substituted test result, report to the DER and the employee that the test must be cancelled; and inform ODAPC of the failure to reconfirm using the format in Appendix D to this part.

(iv) If you determine that there is not a legitimate medical explanation for the adulterated and/or substituted test result, take the following steps:

(A) Report the test to the DER and the employee as a verified refusal to test. Inform the employee that he or she has 72 hours to request a test of the primary specimen to determine if the adulterant found in the split specimen also is present in the primary specimen and/or to determine if the primary specimen meets appropriate substitution criteria.

(B) Except that the request is for a test of the primary specimen and is being made to the laboratory that tested the primary specimen, follow the procedures of §§ 40.153, 40.171, 40.173, 40.179, 40.181, and 40.185, as appropriate.

(C) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen and/or determine that the primary specimen meets appropriate substitution criteria, report your result to the MRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.

(D) If the test of the primary specimen reconfirms the adulteration and/or substitution finding of the split specimen, as the MRO you must report the result as a refusal to test as provided in paragraph (a)(3) of this section.

(E) If the test of the primary specimen fails to reconfirm the adulteration and/or substitution finding of the split specimen, as the MRO you must cancel the test, following procedures in paragraph (b) of this section.

(d) *Category 4:* The laboratory failed to reconfirm some but not all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted.

(1) In the case where the laboratory reconfirmed one or more of the primary specimen result(s), as the MRO, you must follow procedures in paragraph (a) of this section and:

(2) Report that the split was reported also as being invalid, adulterated, and/or substituted (as appropriate).

(3) Inform the DER to take action only on the reconfirmed result(s).

(e) *Category 5:* The split specimen was not available for testing or there was no split laboratory available to test the specimen.

(1) As the MRO, you must report to the DER and the employee that the test must be cancelled and the reason for the cancellation.

(2) As the MRO, you must also direct the DER to ensure the immediate recollection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.

(3) As the MRO, you must notify ODACP of the failure to reconfirm using the format in Appendix D to this part.

(f) For all split specimen results, as the MRO you must:

(1) Enter your name, sign and date (Step 7) of Copy 2 of the CCF.

(2) Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, see § 40.163) to the employer and keep a copy for your records. Transmit the document as provided in § 40.167.

27. Section 40.191 is proposed to be amended by redesignating paragraphs (c) through (e) as (d) through (f), respectively, and adding paragraph (c) to read as follows:

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

* * * * *

(c) As an employee, if you have a recollection under direct observation because of an invalid test result and the MRO reports the result of the observed specimen as being invalid for a different reason than the first specimen, you have refused to take a drug test.

* * * * *

28. Section 40.197 is proposed to be amended by revising paragraph (c)(3), redesignating paragraph (c)(4) as (c)(5), and adding paragraph (c)(4) to read as follows:

§ 40.197 What happens when an employer receives a report of a dilute specimen?

* * * * *

(c) * * *

(3) If the result of the test you directed the employee to take under paragraph (b)(1) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute.

(4) If the result of the test you directed the employee to take under paragraph (b)(2) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph (b)(1) of this section, you must immediately do so.

* * * * *

29. Section 40.201 is proposed to be amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

* * * * *

(c) The split specimen failed to reconfirm all of the primary specimen results because drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. You must follow the applicable procedures in 40.187(b) (no recollection is required in this case, unless the specimen creatinine concentration for a substituted specimen was greater than 2mg/dL but less than or equal to 5mg/dL—which requires recollection under direct observation).

(d) The split specimen failed to reconfirm all of the primary specimen results, and reported that the split specimen was invalid. You must follow the procedures in 40.187(c)(1) (recollection under direct observation is required in this case).

(e) The split specimen failed to reconfirm all of the primary specimen results because the split specimen was not available for testing or there was no split laboratory available to test the specimen. You must follow applicable procedures in 40.187(e) (recollection under direct observation is required in this case).

* * * * *

§ 40.207 [Amended]

30. Section 40.207 is proposed to be amended by removing, in paragraph (a)(3), the reference to ''40.187(b)'' and adding in its place ''40.187(b)(3), (c)(1), and (e)''.

31. Appendix B to Part 40 is proposed to be amended by revising it to read as follows:

Appendix B to Part 40—DOT Drug Testing Semi-Annual Laboratory Report

The summary report shall contain the following information:

Reporting Period: (inclusive dates)
Laboratory Identification: (name and address)
Employer Identification: (name; may include Billing Code or ID code)
C/TPA Identification: (where applicable; name and address)
1. Specimen Results Reported (total number)
By Type of Test
  (a) Pre-employment (number)
  (b) Post-Accident (number)
  (c) Random (number)
  (d) Reasonable Suspicion/Cause (number)
  (e) Return-to-Duty (number)
  (f) Follow-up (number)
  (g) Type of Test Not Noted on CCF (number)
2. Specimens Reported
  (a) Negative (number)
  (b) Negative and Dilute (number)
3. Specimens Reported as Rejected for Testing (total number)
By Reason
  (a) Fatal flaw (number)
  (b) Uncorrected Flaw (number)
4. Specimens Reported as Positive (total number)
By Drug
  (a) Marijuana Metabolite (number)
  (b) Cocaine Metabolite (number)
  (c) Opiates (number)
  (1) Codeine (number)
  (2) Morphine (number)
  (3) 6–AM (number)
  (d) Phencyclidine (number)
  (e) Amphetamines (number)
  (1) Amphetamine (number)
  (2) Methamphetamine (number)
5. Adulterated (number)
6. Substituted (number)
7. Invalid Result (number)

Appendix F to Part 40—[Amended]

32. Appendix F to Part 40 is proposed to be amended by removing the references to § 40.187(a)–(f) and § 40.191(d) and adding in their place § 40.187(a)–(e) and § 40.191(e), respectively.

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BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 2005–22114]

RIN 2105–AD53

Standard Time Zone Boundary in the State of Indiana

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT tentatively proposes to relocate the time zone boundary in Indiana to move St. Joseph, Starke, Knox, Pike, and Perry Counties from the eastern time zone to the central time zone at the request of the County Commissioners. We are tentatively not proposing to change the time zone boundary to move Marshall, Pulaski, Fulton, Benton, White, Carroll, Cass, Vermillion, Sullivan, Daviess, Dubois, Martin, and Lawrence Counties from the eastern time zone to the central time zone based on the petitions from the commissioners in these counties. If additional information is provided that indicates that the time zone boundary should be drawn differently, either to include counties currently excluded or to exclude counties that are currently included in this proposal, we will make the change at the final rule stage of this proceeding.

DATES: Any County Commissioners from the counties that have submitted petitions who wish to provide additional data to justify a change from the eastern time zone to the central time zone should do so by November 10, 2005. Other comments should be received by November 30, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the effective date would be no earlier than 2 a.m. EST Sunday, April 2, 2006, which is the changeover from standard time to daylight saving time.

ADDRESSES: You may submit comments 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 (OST Docket Number 2005–22114) or Regulatory Identification Number (RIN) (2105–AD53) for this rulemaking. 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.

Public Hearings: In addition to the submission of written comments, an opportunity for oral comments will be provided at four public hearings in Jasper, Logansport, South Bend, and Terre Haute. These hearings will be chaired by a representative of DOT in November. We will publish the date and time in a separate document that will be posted in the docket and published in the **Federal Register**.

The hearings will be informal and will be tape-recorded for inclusion in the docket. The DOT representative will provide an opportunity to speak for all those wishing to do so, to the greatest extent possible. The hearing locations will be accessible for persons with disabilities. If you need a sign language interpreter, please let us know no later than one week before the hearing.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400

Seventh Street, SW., Washington, DC 20590, *indianatime@dot.gov;* (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Current Indiana Time Observance

Under Federal law, 82 Indiana counties are in the eastern time zone and 10 are in the central time zone. The central time zone counties include five in the northwest (Lake, Porter, La Porte, Newton, and Jasper) and five in the southwest (Posey, Vanderburgh, Warrick, Spencer and Gibson). The remaining 82 counties are in the eastern time zone. Neighboring States observe both eastern and central time. Illinois and western Kentucky observe central time, while eastern Kentucky, Ohio, and the portion of Michigan adjoining Indiana observe eastern time.

Federal law provides that it is up to an individual State to decide whether or not to observe daylight saving time. Generally, a State must choose to observe, or not observe, across the entire State. The one exception is that, if a State is in more than one time zone, a ''split'' observance is permitted. Under this scenario, all of a State that is in one time zone may observe daylight saving time, while the remainder of the State in the different time zone does not. Under Indiana law, for many years, the central time zone portion of the State has observed daylight saving time, while the eastern time zone portion of the State has not observed daylight saving time.

The effect of daylight saving time is the equivalent of moving one time zone to the east. This means that, by remaining on eastern standard time year-round, the eastern time zone portion of Indiana has been on the same time as New York in the winter and on the same clock time as Chicago in the summer. The impact of the State legislation (discussed in more detail below) to observe daylight saving time beginning in 2006 is that, in the summer, the time of sunrise and sunset on eastern daylight saving time will be an hour later than it currently is under year-round eastern standard time. There will be no change in the sunrise and sunset times during the winter when eastern standard time will continue to be observed.

Statutory Requirements

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.''

DOT Procedures To Change a Time Zone Boundary

The Department has typically used a set of procedures to address time zone issues. Under these DOT procedures, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area provide adequate supporting data for the proposed change. We ask that the petition include, or be accompanied by, detailed information supporting the requesting party's contention that the requested change would serve the convenience of commerce. The principal standard for deciding whether to change a time zone is defined very broadly to include consideration of all the impacts upon a community of a change in its standard of time. We also ask that the supporting documentation address, at a minimum, each of the following questions in as much detail as possible.

1. From where do businesses in the community get their supplies, and to where do they ship their goods or products?

2. From where does the community receive television and radio broadcasts?

3. Where are the newspapers published that serve the community?

4. From where does the community get its bus and passenger rail services; if there is no scheduled bus or passenger rail service in the community to where must residents go to obtain these services?

5. Where is the nearest airport; if it is a local service airport, to what major airport does it carry passengers?

6. What percentage of residents of the community work outside the community; where do these residents work?

7. What are the major elements of the community's economy; is the community's economy improving or declining; what Federal, State, or local plans, if any, are there for economic development in the community?

8. If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes?

In addition, we consider any other information that the county or local officials believe to be relevant to the proceeding.

Indiana's Decision To Observe Daylight Saving Time

In 2005, the Indiana General Assembly adopted legislation (Indiana Senate Enrolled Act 127 or ''the Indiana Act'') providing that the entire State of Indiana will begin to observe daylight saving time beginning in 2006. In addition, the Indiana Act addressed the issue of changing the location of the boundary between the eastern and central time zones. The Indiana Act stated that, ''[T]he [S]tate supports the county executive of any county that seeks to change the time zone in which the county is located under the procedures established by Federal Law.'' The Indiana Act also provided that, ''The governor and the general assembly hereby petition the United States Department of Transportation to initiate proceedings under the Uniform Time Act of 1966 to hold hearings in the appropriate locations in Indiana on the issue of the location of the boundary between the Central Time Zone and the Eastern Time Zone in Indiana.'' Finally, the Indiana Act requested that DOT refrain from changing the time zone of any county currently located within the central time zone and five counties near Cincinnati and Louisville.

On July 15, 2005, Secretary Mineta sent a letter to Governor Daniels responding to this legislation and letters from the Governor. The letter noted that it is our normal practice, in implementing our responsibilities under the Uniform Time Act with respect to the location of time zone boundaries, to take action on specific requests for change in the time zone boundaries for a particular jurisdiction from the elected officials of that jurisdiction. After receiving a request, we review it and the supporting data to then determine whether the issuance of an NPRM is justified. Once justified, we issue the NPRM to propose a change.

DOT Notice Inviting Petitions

On August 17, 2005, DOT published a notice in the **Federal Register** inviting county and local officials in Indiana that wish to change their current time zone in response to Indiana Senate Enrolled Act 127 to notify DOT of their request for a change by September 16, 2005 and to provide data in response to the questions above. In addition, it announced the opening of an internet-accessible, public docket to receive any petitions and other relevant documents concerning the appropriate placement of the time zone boundary in the State of Indiana.

Petitions Received

We received nineteen petitions from counties asking to be changed from the eastern time zone to the central time zone. One of the counties (Fountain County) subsequently withdrew its request.

In general, the petitions are clustered in the northwest (St. Joseph, Starke, Marshall, Pulaski, Fulton, Benton, White, Carroll and Cass Counties) and the southwest (Sullivan, Knox, Daviess, Martin, Lawrence, Pike, Dubois and Perry Counties). In the central portion of western Indiana, only Vermillion County asked to be changed to central time.

The amount of data provided in the petitions varied substantially among counties. Under our normal procedures, we do not take action unless the county makes a clear showing that the proposed change would meet the statutory standard. We recognize, however, that this is an unusual case because of the number of counties involved, their relationship to each other and to other neighboring counties, and the circumstances leading up to these petitions. Although the proposed counties have provided adequate supporting data to justify the issuance of an NPRM, we will critically review contrary and supporting information that may be provided by others, and any other related comments and data prior to issuing a final rule.

Other Communications From Local Officials

We also received a number of letters from counties and cities advising us that they had considered whether to petition for a change and, at this time at least, were satisfied with their current time zone boundary or wished to stay in the same time zone as Indianapolis, which is located in Marion County and is in the eastern time zone. Those counties included Warren, Monroe, Orange, Steuben, Noble, Hendricks, Jefferson, Crawford and Jay. The cities of Whiting, Hebron, and Munster also filed letters expressing satisfaction with their current time zone.

Comments to the Docket

There are currently nearly 600 entries to the docket. In addition, we have received hundreds of calls, questions, and e-mails on the Indiana time zone issue. Many comments were filed by Chambers of Commerce, businesses, various community associations and interest groups, and individuals. The commenters suggested a wide variety of approaches including placing all of the State in the eastern time zone, placing all of the State in the central time zone, and maintaining the current time zone boundaries. Some of the commenters included data on sunrise/sunset, economic development and trends, commuting patterns, school districts and institutions of higher learning, transportation services, the location of cultural and recreational activities, and a wide variety of other factors. Other commenters shared their personal preferences and their sense of which time zone that they most closely associate with.

The focus of this stage of the proceeding to date has been on the petitions by the counties. At the next stage, however, we will carefully review the petitions submitted in light of the comments received and data gathered during the next stage of this rulemaking process. None of the counties where we have tentatively proposed to relocate the time zone boundaries and none of the counties where we have tentatively decided not to propose a change should regard their petitions as resolved, nor should they rely on the current proposal, which very well may change when all the information is available and a final rule is issued.

DOT Determination

Based on the petitions and the supporting data filed by the County Commissioners, we find that St. Joseph, Starke, Knox, Pike, and Perry Counties have provided enough information to justify proposing to change those counties from the eastern to central time zone. As noted above, we have received and will review the comments to the docket already received. We are now providing a further opportunity to others to provide information that might refute or support the basis provided to date, to enable a final decision. We are requesting comments on whether to make the change in any, or all, of the remaining 13 counties that petitioned for change and on whether we should not adopt any or all of the proposed changes. If supplementary information is filed by the County Commissioners supporting the inclusion of additional counties and it is not otherwise refuted, an appropriate change will be made in the final rule. We invite representatives from any of the counties that filed petitions to submit additional justification to the public docket. In order to allow the public time to comment on any additional information that may be submitted by the counties, we request any further submissions to be sent to the public docket by November 10, 2005. In addition, we ask that any county that submits additional information to the public docket present this information at a public hearing chaired by a DOT representative.

St. Joseph, Starke, Knox, Pike, and Perry County addressed all, or virtually all, of the factors that we consider in these proceedings and made a reasonable case that changing to the central time zone would serve ''the convenience of commerce.'' In addition, we considered each county's geographic location compared to the current time zone boundary and how closely interrelated neighboring counties appeared to be. The specific reasons for granting the petitions for each of these counties differ based on the facts specific to each case. For example, St. Joseph County filed detailed information addressing each factor, showing how changing to the central time zone would be beneficial for the community. Starke County had been in the central time zone and it presented evidence of close ties to areas in the central time zone. Based on the evidence presented, Pike County appears to be closely tied to Evansville for many goods, services, and activities. Knox and Perry County provided information on their commuting patterns to the central zone, and reliance on Evansville for a majority of their communications and transportation services.

We have not included all the counties that petitioned, for a number of reasons. Some presented almost no arguments or supporting data on why it would be appropriate to change the time zone boundary. Others addressed all, or most, factors but acknowledged that a significant connection with the eastern time zone. A number of counties focused on the potential change to their neighbors' time zone, and seemed to be more concerned with staying in the same time zone as their neighbors than in changing their time zone. In other cases, the counties seemed to be equally connected to the eastern and central time zones. Traditionally, we have been reluctant to create ''islands of time'' by placing one county in a different time zone from all its neighboring counties in the State; we consider the affect on economic, cultural, social, and civic activities between neighboring counties in making decisions. Finally, we looked at the distance each county is from the current time zone boundary, the proximity of each county to important metropolitan areas, and where the major roads and bridges are located. We wish to strongly emphasize that our proposal is a tentative decision and is subject to change based on additional data reviewed in the next stage of this proceeding.

In our experience, time zone boundary changes can be extremely disruptive to a community and, therefore, should not be made without careful consideration. Our proposal is intended to minimize disruption and to allow communities to fully assess the impact of potential changes to the time zone boundaries of their neighbors and daylight saving time observance beginning in April 2006. If comments to the docket or at the hearings provide additional information or stronger arguments for a change, we will make the appropriate changes in the final rule. We are happy to work with county representatives to provide guidance on the kinds of additional supporting data that would be most useful in making a case for a change of time zone boundary. If a county is not included in any final rule that may be issued in this proceeding, governmental representatives are free to petition DOT in the future to make further changes to the time zone boundary.

Request for Comments

To aid us in our consideration of whether a time zone change would be ''for the convenience of commerce,'' we ask for comments on the impact on commerce of a change in time zone and whether a new time zone would improve the convenience of commerce. The comments should address the impact on such things as economic, cultural, social, and civic activities and how time zone changes affect businesses, communication, transportation, and education. The comments should be as detailed as possible, providing the basis of the information including factual data or surveys. For example, with regard to major bus, rail, and air transportation, information such as the average time it takes for an average county resident to travel to a transportation terminal or the average distance to the terminal for a county resident would be useful. With regard to the impact of the time zone on education, if a school district crosses county lines, the number of students in each county in that district would be helpful. Information on school activities such as sporting events or academic competitions that take place in other counties or locations that are not on the same time zone as the school district would also be useful. Similar information on community colleges could also be beneficial. Finally, we would appreciate information on how the different time zones affect the students and the schools.

We specifically invite comment from neighboring Indiana counties, and counties in Michigan, Kentucky, Ohio, and Illinois that may also be impacted by any change. For example, we are aware of the importance of South Bend to its neighboring communities in Indiana and Michigan and specifically request comment on potential effects to those communities to the north, east, and south if St. Joseph County is changed at the final rule stage and placed in a different time zone from the greater Michiana area as additional information could change our tentative decision.

Although the five counties have submitted sufficient information to begin the rulemaking process, the decision whether actually to make the change will also consider information received at the hearings or submitted in writing to the docket. Persons supporting or opposing the change should not assume that the change will be made merely because DOT is making the proposal. The Department here issues no opinion on the ultimate merits of the counties' requests. Our decision in the final rule will be made on the basis of information developed during the entire rulemaking proceeding, including the petitions.

Impact on Observance of Daylight Saving Time

As noted above, this time zone proposal does not affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2 a.m. on the first Sunday in April until 2 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance. Under recently enacted federal legislation, beginning in 2007, daylight saving time will begin the second Sunday in March and end the first Sunday in November.

Comment Period

We are providing 30 days for public comments in this proceeding. Although we normally provide 60 days for public comments on proposed rules, we believe that 30 days is an adequate public comment period in this instance. It is important to resolve this rulemaking expeditiously so that we can provide ample notice if changes to the time zone boundaries are adopted. Since the introduction and passage of the State legislation, the time zone boundary issue has been actively discussed and analyzed. In this regard, we expect that 30 days is adequate time to gather the necessary data, which is based on currently available information, or share personal preferences. Because of the number of counties under consideration, please identify which county or counties you are commenting on.

Regulatory Analysis & Notices

This proposed 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. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposal, if adopted, would primarily affect individuals and their scheduling of activities. Although it would affect some small businesses, not-for-profits and, perhaps, a number of small governmental jurisdictions, it would not be a substantial number. In addition, the change should have little, if any, economic impact.

Therefore, I certify under 5 U.S.C. 605(b) that this proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that

they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Joanne Petrie at (202) 366–9315.

Collection of Information

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

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that impose unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not result in a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under E.O. 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.

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

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.*

List of Subjects in 49 CFR Part 71

Time zones.

For the reasons discussed above, the Office of the Secretary proposes to amend Title 49 part 71 to read as follows:

PART 71—STANDARD TIME ZONE BOUNDARIES

1. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (b) of § 71.5, *Boundary line between eastern and central zones,* is revised to read as follows:

§ 71.5 Boundary line between eastern and central zones.

* * * * *

(b) *Indiana-Illinois.* From the junction of the western boundary of the State of Michigan with the northern boundary of the State of Indiana easterly along the northern boundary of the State of Indiana to the east line of St. Joseph County; thence south along the east line of St. Joseph County to the border with Marshall County; thence west along the north line of Marshall County; thence south along the west line of Marshall County; thence west along the south line of Starke County; thence south along the east line of Jasper County; thence south and west along the south line of Jasper County; thence west along the south line of Newton County to the intersection of Indiana-Illinois border; thence south along the Indiana-Illinois border to the intersection with the northwest corner of Knox County; thence east along the north line of Knox County; thence south and west along the east line of Knox County to the intersection with Pike County; thence easterly along the northeast line of Pike County; thence south along the east line of Pike County; thence east along the south line of Dubois County; thence north and east along the line between Dubois and Perry County; thence east and south along the northeast line of Perry County to the border of Indiana and Kentucky.

Issued in Washington, DC on October 25, 2005.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05–21606 Filed 10–26–05; 4:59 pm]

BILLING CODE 4910–02–P

Notices

Federal Register
Vol. 70, No. 209
Monday, October 31, 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

Farm Service Agency

Commodity Credit Corporation

Request for Extension and Revision of a Currently Approved Information Collection; Payment Eligibility and Payment Limitation Determinations Under the Noninsured Crop Disaster Assistance Program

AGENCIES: Farm Service Agency and the Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) to request an extension and revision of a currently approved information collection. This information collection is used to support payment eligibility and payment limitation determinations for multiple programs including the Conservation Reserve Program, Price Support Programs, the Direct and Counter-Cyclical Program authorized by the Farm Security and Rural Investment Act of 2002, and the Noninsured Crop Disaster Assistance Program.

DATES: Comments on this notice must be received on or before December 30, 2005 to be assured consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Farm Service Agency, Attn: James Baxa, Program Manager, Production, Emergencies, and Compliance Division, Farms Service Agency, United States Department of Agriculture, STOP 0517, Room 4752, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–0517. Comments also may be submitted via facsimile to (202) 720–4941 or by e-mail to *james.baxa@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: James Baxa, Program Manager at (202) 720–9882, or Diane Sharp, Director of Production, Emergencies, and Compliance Division at (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Title: Payment Eligibility and Payment Limitation Determinations under the Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0096.

Expiration Date of Approval: November 30, 2006.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The collection of information is necessary to determine the eligibility of individuals and entities as defined at 7 CFR part 1400 for payment eligibility and payment limitation in multiple programs including the Conservation Reserve Program, the Price Support Programs, the Direct and Counter-Cyclical Program and the Noninsured Corp Disaster Assistance Program. The regulations at 7 CFR part 1400 provide for ''actively engaged in farming'' and ''person'' determinations to be made for individuals or entities, with respect to a particular farming operation, in order to determine their payment eligibility and payment limitations under the multiple programs. Forms CCC–502A, CCC–502B, CCC–502C, CCC–502D, CCC–502EZ, CCC–501A and CCC–501B are used by the respondents. The proposed revision is the consolidation of these mentioned forms into a single form to be used by all respondents. The common elements to collect from individuals or entities are names, farming interest, members, addresses, tax identification numbers, location of the lands, percentage of leased or owned equipments, citizenship types, estimated farming labor hours, estimated percentage of farming management, and designated names in receiving payments. The respondents are allowed to submit this information either through the physical use of the form or electronically to the appropriate FSA County office-based personnel who receive and make the payment eligibility determinations.

Information collection under Titles I and II of the Farm Security and Rural Investment Act of 2002 are exempted from Paperwork Reduction Act of 1995, including the Conservation Reserve Program, the Price Support Programs, the Direct and Counter-Cyclical Program. Only the Noninsured Crop Disaster Assistance Program is not exempt from the requirement of Paperwork Reduction Act, so it is necessary to describe the information collection in this Notice. If the information is not collected from the respondents, the FSA would not able to administer the payment programs properly to comply with the regulations.

Estimate of Burden: Average 56 minutes per response.

Type of Respondents: Producers who, as owner, landlord, tenant, or sharecropper, are involved in the farming operations and who would seek benefits under the Noninsured Corp Disaster Assistance Program.

Estimated Annual Number of Respondents: 125,000.

Estimated Number of Responses per Respondent: One per respondent.

Estimated Total Burden Hours: 116,667.

Comment is invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to James Baxa, Program Manager, Production, Emergencies and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, Room 4752–S, 1400 Independence Avenue, SW., Washington, DC 20250. Copies of the information collection may be obtained from James Baxa the above address.

All comments received in responses to this notice, including names and addresses when provided, will be a

matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on October 24, 2005.

Michael W. Yost,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05–21593 Filed 10–28–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Modoc County Speaker, and Tehama County Speaker, (5) Sub-Committee Reports, (6) Chairman's Perspective, (7) General Discussion, (8) County Update, (9) Next Agenda.

DATES: The meeting will be held on November 10, 2005 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; E-Mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 7, 2005 will have the opportunity to address the committee at those sessions.

Dated: October 25, 2005.

James F. Giachino,

Designated Federal Official.

[FR Doc. 05–21610 Filed 10–28–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2006; Maximum Portion of Guarantee Authority Available for Fiscal Year 2006

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR 4279.107(b) and 4280.126(c), Rural Development (the Agency) has the authority to charge an annual renewal fee for loans made under the Business and Industry (B&I) Guaranteed Loan Program and the Renewable Energy and Energy Efficiency Improvements (REEEI) Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the renewal fee rate at one-fourth of 1 percent for the B&I Guaranteed Loan Program and one-eighth of 1 percent for the REEEI Guaranteed Loan Program. These rates will apply to all loans obligated in fiscal year (FY) 2006 that are made under the cited programs. As established in 7 CFR 4279.107 and 4280.126, the amount of the fee on each guaranteed loan will be determined by multiplying the fee rate by the outstanding principal loan balance as of December 31, multiplied by the percent of guarantee.

As set forth in 7 CFR 4280.126(a), each fiscal year the Agency shall establish the initial guarantee fee rate for loans made under the REEEI Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the initial guarantee fee rate at 1 percent for loans made in FY 2006.

As set forth in 7 CFR 4279.107(a) and 4279.119(b)(4), each fiscal year the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that fiscal year that may be used to guarantee loans with a B&I guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, which experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster, or are high impact as defined in 7 CFR 4279.155(b)(5).

Not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business and Industry Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Rick Bonnet, Special Projects/Programs Oversight Division, Rural Business-Cooperative Service, USDA, STOP 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, telephone (202) 720–1804.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 as amended by Executive Order 13258.

Dated: October 21, 2005.

Peter J. Thomas,

Administrator.

[FR Doc. 05–21588 Filed 10–28–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 53–2005)

Foreign–Trade Zone 84 - Houston, Texas, Foreign–Trade Zone 38 - Spartanburg Co., South Carolina, Foreign–Trade Zone 126 - Reno, Nevada, Foreign–Trade Zone 70 - Detroit, Michigan, Request for Manufacturing Authority, Michelin North America (Wheel Assembly)

Applications have been submitted to the Foreign–Trade Zones Board (the Board) by the following grantees, on behalf of Michelin North America (MNA), requesting authority to assemble wheels under FTZ procedures at the sites listed below. The applications were formally filed on October 20, 2005.

Grantee: FTZ 84, Port of Houston Authority

Site: SZ 84R
Location: 8800 City Park Loop, Houston, Texas
Employees: 50 employees
Grantee: FTZ 38, South Carolina State Ports Authority
Site: FTZ 38, Site 5
Location: 101 Michelin Drive, Laurens, South Carolina
Employees: 96 employees
Grantee: FTZ 126, Economic Development Authority of Western Nevada
Site: FTZ 126, Site 7
Location: 14551 Industry Circle, Reno, Nevada
Employees: 36 employees
Grantee: FTZ 70, Greater Detroit Foreign Trade Zone, Inc.
Site: FTZ 70, Site 18
Location: 7111 Crabb Road, Temperance, Michigan
Employees: 40 employees

The general–purpose zone sites are warehouses operated by TNT Logistics for MNA. The applicants are requesting to perform wheel assembly using domestic and foreign components on behalf of auto manufacturer clients at each of the sites. Foreign–sourced components include tires (HTSUS 4011.10, 4011.20, 4011.61, 4011.62, 4011.63, 4011.92, 4011.93, 4011.94, 4011.99, duty–free to 4.0%), wheel rims (HTSUS 8708.70, duty–free to 2.5%), flaps (HTSUS 4012.90, duty–free to 4.2%), valves (HTSUS 8481.80, duty–free to 5%), tubes (HTSUS 4013.10, duty–free to 3.7%), gaskets (HTSUS 4016.93, duty–free to 2.5%), sensors (HTSUS 8525.10, duty–free), and nuts (HTSUS 7318.16, duty–free).

FTZ procedures would exempt MNA from Customs duty payments on the foreign components used in production for export to non–NAFTA countries. On shipments for U.S. consumption and to NAFTA markets, MNA could elect the wheel assembly duty rate (generally dutiable as an auto part - 2.5%) for the foreign components (mostly tires dutiable at 4%) listed above. The auto part duty rate (2.5%) would apply if the wheel assemblies are shipped via zone–to-zone transfer to U.S. motor vehicle assembly plants with subzone status. The applications indicate that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services*: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or
2. *Submissions Via the U.S. Postal Service*: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is December 30, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 17, 2006).

Copies of the requests will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address Number 1 listed above.

Dated: October 21, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–21616 Filed 10–28–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No: 051017266–5266–01]

Revision to the Unverified List—Guidance as to ''Red Flags''

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (''BIS'') published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks or post-shipment verifications could not be conducted for reasons outside the control of the U.S. Government (''Unverified List''). Additionally, on July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries in transactions where BIS is not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction. These notices advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a ''red flag'' as described in the guidance set forth in Supplement No. 3 to 15 CFR part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. This notice adds five entities to the Unverified List. The entities are: T.Z.H. International Co. Ltd., Room 23, 2/F, Kowloon Bay Ind Center, No. 15 Wany Hoi Rd, Kowloon Bay, Hong Kong, Special Administrative Region; Design Engineering Center, House 184, Street 36, Sector F–10/1, Islamabad, Pakistan; Kantry, 13/2 Begovaya Street, Moscow, Russia 125284; Elaton Company, 20B Berezhkovskaya Naberezhnaya, Moscow, Russia; and Pskovenergo Service, 47–A Sovetskaya Street, Pskov, Russia Federation, 180000.

DATES: This notice is effective October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) (''EAR''), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct pre-licence checks (''PLCs'') to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out post-shipment verifications

(''PSVs'') to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). BIS listed a number of foreign end-users and consignees involved in such transactions in the Unverified List that was included in BIS's **Federal Register** notice of June 14, 2002. See 67 FR 40910. On July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries where BIS is not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee, or other party to an export transaction. *See* 69 *FR* 42652.

The June 14, 2002 and July 16, 2004 notices advised exporters that the involvement of a listed person in a transaction constituted a ''red flag'' under the ''Know Your Customer'' guidance set forth in Supplement No. 3 to 15 CFR part 732 of the EAR. Under that guidance, whenever there is a ''red flag,'' exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR. The **Federal Register** notices further stated that BIS may periodically add persons to the Unverified List based on the criteria set forth above, and remove persons when warranted.

This notice advises exporters that BIS is adding T.Z.H. International Co. Ltd. in the Hong Kong Special Administrative Region, Design Engineering Center in Pakistan, Kantry in Russia, Elaton Company in Russia, and Pskovenergo Service in Russia to the Unverified List. A ''red flag'' now exists for transactions involving these entities due to their inclusion on the Unverified List. As a result, exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR.

The Unverified List, as modified by this notice, is set forth below.

Wendy Wysong,

Deputy Assistant Secretary for Export Enforcement.

Unverified List (as of October 31, 2005)

The Unverified List includes names, countries, and last known addresses of foreign persons involved in export transactions with respect to which: the Bureau of Industry and Security (''BIS'') could not conduct a pre license check (''PLC'') or a post shipment verification (''PSV'') for reasons outside of the U.S. Government's control; and/or BIS was not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee or other party to an export transaction. Any transaction to which a listed person is a party will be deemed to raise a ''red flag'' with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR part 732. The red flag applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region.	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN. BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Peluang Teguh	Singapore	203 Henderson Road #09–05H, Henderson Industrial Park.
Lucktrade International PTE Ltd	Singapore	35 Tannery Road #01–07 Tannery Block, Ruby Industrial Complex, Singapore, Ltd. 347740.
Arrow Electronics Industries	United Arab Emirate	204 Arbift Tower, Benyas Road, Dubai.
Jetpower Industrial Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Onion Enterprises Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Lucktrade International	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Litchfield Co. Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Sunford Trading Ltd	Hong Kong Special Administrative Region.	Unit 2208, 22/F, 118 Connaught Road West.
Parrlab Technical Solutions, LTD	Hong Kong Special Administrative Region.	1204, 12F Shanghai Industrial Building, 48–62 Hennesey Road, Wan Chai.
T.Z.H. International Co. Ltd.	Hong Kong Special Administrative Region.	Room 23, 2/F, Kowloon Bay Ind Center, No. 15 Wany Hoi Rd, Kowloon Bay.
Design Engineering Cebter	Pakistan	House 184, Street 36, Sector F–10/1, Islamabad.
Kantry	Russia	13/2 Begovaya Street, Moscow.
Elaton Company	Russia	20B Berezhkovskaya Naberezhnaya, Moscow.
Pskovenergo Service	Russia	47–A Sovetskaya Street, Pskov, Russia Federation, 180000.

[FR Doc. 05–21621 Filed 10–28–05; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–828)

Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil

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

SUMMARY: On August 19, 2005, the U.S. Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on certain hot–rolled flat–rolled carbon quality steel products (hot–rolled steel products) from Brazil. The review covers one manufacturer/exporter, Companhia Siderúrgica de Tubarão (CST). Although interested parties had an opportunity to comment on our preliminary results, we received no comments. The Department has not made any changes in its analysis following the publication of the preliminary results. Therefore, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or David Kurt Kraus, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–3019 and (202) 482–7871, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2005, the Department published the preliminary results of new shipper review of certain hot–rolled steel products from Brazil. *See Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of New Shipper Review*, 70 FR 48668 (August 19, 2005). No party submitted comments on the preliminary results.

Period of Review

The period of review (POR) is March 1, 2004, through August 31, 2004.

Scope of Review

The products covered by this order are certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch of greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics of other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Specifically included in this scope are vacuum degassed, fully stabilized (IF) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. Steel products to be included in the scope of this agreement, regardless of Harmonized Tariff Schedule (HTS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent of less, by weight; and (3) none of the elements listed below exceeds certain specified quantities.

The merchandise subject to the order is currently classifiable under subheadings 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00 of the HTS. Certain hot–rolled flat–rolled carbon–quality steel covered by this agreement, including vacuum degassed and fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under tariff numbers 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Final Results of Review

We determine that a margin of 0.00 percent exists for CST for the period March 1, 2004, through August 31, 2004.

Assessment

The Department will determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). We have calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for each importer. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from CST of hot–rolled steel products from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash–deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(1) and 751 (a)(2)(C) of the Tariff Act of 1930, as amended (the Act):

- for subject merchandise manufactured and exported by CST the cash deposit rate shall be 0.00 percent;
- for subject merchandise exported by CST but not manufactured by CST the cash–deposit rate will continue to be the ''all others'' rate or the rate applicable to the manufacturer, if so established;
- the cash deposit rate for exporters who received a rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding;

- if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the most recent segment of these proceedings in which that manufacturer participated;

• if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 42.12 percent, the all others rate established in the less–than-fair–value investigation. (*See Notice of Antidumping Duty Order and Sales at Less Than Fair Value: Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil*, 67 FR 11093 (March 12, 2002)).

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 double antidumping duties.

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

We are issuing and publishing this new shipper review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: October 24, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–6012 Filed 10–28–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on certain stainless steel butt–weld pipe fittings from Taiwan. The period of review is June 1, 2003, through May 31, 2004. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act).

EFFECTIVE DATE: October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0405 and (202) 482–8221, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2005, the Department published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt–weld pipe fittings from Taiwan covering the period June 1, 2003, through May 31, 2004. *See* 70 FR 39735. The final results for the antidumping duty administrative review of certain stainless steel butt–weld pipe fittings from Taiwan are currently due no later than November 8, 2005.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Act requires the Department to make a final determination in an administrative review within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

In accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame (i.e., by November 8, 2005) because of voluminous affiliation allegations raised in petitioners' case briefs, requiring more time for analysis. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for completion of the final results of this administrative review by 30 days, to no later than December 8, 2005.

Dated: October 25, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6011 Filed 10–28–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final determination made by the U.S. International Trade Administration, in the matter of Alloy Magnesium from Canada, CVD, New Shipper Review, Secretariat File No. USA–CDA–2003–1904–02.

SUMMARY: Pursuant to the Order of the Binational Panel dated September 9, 2005, affirming the final remand determination described above, the panel review was completed on October 21, 2005.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On September 9, 2005, the Binational Panel issued an order which affirmed the final determination of the United States International Trade Administration (ITA) concerning Alloy Magnesium from Canada, CVD, New Shipper Review. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists discharged from their duties effective October 21, 2005.

Dated: October 21, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–6013 Filed 10–28–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 051019272–5272–01; I.D. 092905B]

Open Rivers Initiative Barrier Removal Project Grants

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

ACTION: Notice of availability of financial assistance.

SUMMARY: The NOAA Open Rivers Initiative (ORI) provides funding to catalyze the implementation of locally-driven barrier removal projects that remove dams and other barriers, in order to benefit living marine resources, particularly diadromous fish. Projects funded through ORI grants will have strong on-the-ground habitat restoration components that foster economic, educational, and social benefits for citizens and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. The role of NOAA in this initiative is to provide funding and technical assistance for barrier removal projects. Proposals selected for funding through this solicitation will be implemented through a cooperative agreement. Funding of up to $6,000,000 is expected to be available for the ORI Project Grants competition in FY 2007. The NOAA Restoration Center (RC) within the Office of Habitat Conservation will administer this grants initiative, and anticipates that typical awards will range from $50,000 to $250,000 per project. Although a select few may exceed this range, project proposals requesting over $1,000,000 will not be accepted or reviewed. To help expedite the implementation of on-the-ground components of barrier removal projects in 2007, up to $1,000,000 may be made available in 2006 from a related NOAA grants program to support feasibility, engineering, and/or design elements of a small number of projects where the same application also seeks funding for on-the-ground removal activities.

DATES: Applications must be postmarked or submitted no later than 11:59 PM EST on January 13, 2006.

ADDRESSES: Applications should be submitted via www.grants.gov. If applicants do not have access to the internet, applications must be mailed to: NOAA Fisheries, Office of Habitat Conservation, Restoration Division (F/HC3), 1315 East West Highway, Silver Spring, MD 20910–3282. ATTN: Open Rivers Initiative Project Applications. No facsimile or electronic mail applications will be accepted. 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/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified below. All application requirements contained in the full funding announcement must be adhered to in submitted proposals.

FOR FURTHER INFORMATION CONTACT: Robin Bruckner, (301) 713–0174, or by e-mail at *Robin.Bruckner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Summary

The principal objectives of the ORI are to provide Federal financial and technical assistance to locally-driven removals of dams and other barriers to enhance watershed health, to foster sustainable fish populations, and to improve community vitality and economic growth. This will help restore living marine and coastal resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources, particularly diadromous fish. The ORI focus is on implementing projects that will directly benefit diadromous species such as salmon, sturgeon, shad, river herring, striped bass, and American eel.

Successful applications will be those that:

- Demonstrate collaboration among entities such as public and nonprofit organizations, citizen and watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, academia, and local, state, tribal governments and Federal agencies to cooperatively implement barrier removal projects;
- Document community benefits related to: increased business opportunities, removal of potential liability, reduced flood impacts, and/or improved opportunities for recreation, park use, or other tangible community benefits; and
- Are able to: achieve a net gain in diadromous fish-accessible stream miles, increase the number of barrier removals in a particular watershed, document education and outreach or volunteer hours involved, and maximize project partnerships.

Project partners may contribute funding, land, technical assistance, workforce support or other in-kind services; promote grass-roots participation in the improvement of locally important living marine resources; and engender local stewardship and monitoring activities to sustain and evaluate the performance of the barrier removal. Previous locally-driven barrier removal projects supported by NOAA have been successful because they had significant local backing, depended upon citizens' hands-on involvement, and drew community support through strategic outreach and education.

Electronic Access

Information on barrier removal proposals funded to date under the NOAA Community-based Restoration Program can be found on the World Wide Web at: *http://www.nmfs.noaa.gov/habitat/restoration*. As has been the case since October 1, 2004, applicants can access the full funding announcement and download and submit electronic grant applications for NOAA Financial Assistance at the grants.gov web site: *http://www.grants.gov*. Applicants responding to the ORI are strongly encouraged to submit applications through the grants.gov web site (see **ADDRESSES**).

Initiative Priorities

Initiative priorities are focused on the removal of fish passage barriers within historic or present diadromous fish habitat to achieve a net gain in diadromous fish-accessible stream miles and fish population recovery. Priority consideration will be given to those proposals that: include fish population health benefits; are expected to have environmentally-compatible economic benefits resulting from the barrier removal; will have synergistic results due to related fish passage or restoration activities upstream or downstream; will improve watershed health with measurable outcomes; and will result in community revitalization and stewardship. Priority will also be given to those proposals that maximize the number of stream miles for which access is restored, and/or maximize the potential for the recovery of fish populations. Removal of complete barriers to fish passage will be given priority consideration, as will proposals for which the bulk of funding will support on-the-ground implementation activities. Proposals that address partial barriers will also be considered for funding, but may receive lower priority. In limited circumstances, the initiative will consider remedies such as fish ladders that are dependent on proper stream flows, operation, and maintenance to ensure free passage. Proposals that request funds for

feasibility, engineering and/or design in addition to construction elements may be considered to receive partial funding in 2006 on a limited basis so that construction elements can move forward in a timely fashion with funding made available in 2007. This initiative does not fund feasibility studies, removal, partial removal, or replacement of barriers owned by the Federal government or dams licensed by the Federal Energy Regulatory Commission (FERC). Such proposals will be disqualified.

Restoration of access may include, but is not limited to: complete dam removal; notching or breaching of dams; removal of barriers such as culverts that completely or partially block fish passage and replacement with bridges, fish passable culverts or tide gates; removal of temporary or seasonal dams that block fish migration; or removal of other barriers to diadromous fish passage. Restoration activities may include upstream and/or downstream passage of diadromous fish.

The ORI will emphasize the selection of barrier removal projects that demonstrate a coordinated effort to maximize quality diadromous fish habitat within a watershed. Proposals should assess the state of fish barriers/fish access in the watershed to receive greater consideration than those that demonstrate little knowledge of other barriers in the system.

Projects that restore habitats found to be socio-economically important within their region with regard to such issues as commercial (e.g., fisheries) and recreational use and/or aesthetic and stewardship values will be favored. This may include projects that result in beneficial uses of newly available land previously inundated by a reservoir. Projects that document community benefits related to increased business opportunities, removal of potential liability, and/or improved opportunities for recreation, park use, or other tangible community benefits will be given priority. However, this initiative does not fund urban redevelopment components.

While the focus of this initiative is to provide funding and technical expertise to support on-the-ground implementation of barrier removal projects that involve significant community support, NOAA recognizes that accomplishing barrier removal is a multi-faceted effort involving feasibility studies, project design, engineering services, permitting, construction, legal considerations, oversight, pre- and post-removal monitoring, and education and outreach. Applicants may therefore apply for funding to support a combination of these activities in addition to the barrier removal itself. NOAA anticipates that up to $1,000,000 may be made available from a related grants program to support the feasibility, engineering, and/or design elements of a proposal in 2006 so that the removal activities can proceed with additional funding awarded through ORI to successful applicants in 2007 using a multi-year award process. Although barrier removals themselves are often not suitable for volunteer involvement, projects should involve an outreach and/or volunteer component tied to the overall barrier removal goals and activities to receive greater consideration. Additionally, projects must have pre- and post-project monitoring components.

Implementation of on-the-ground barrier removal projects must have clearly identified goals (broad in scope) and specific, measurable objectives. Evaluating these objectives must involve monitoring during the project period of at least one structural and one functional parameter, as supported by Title I of the Estuaries and Clean Waters Act of 2000, to ensure a basic level of assessment of project success. Monitoring must be conducted in a timely fashion with a frequency and length of time appropriate for each parameter in the context of the project objectives and type. Examples of structural and functional monitoring parameters for barrier removal project types are available on the World Wide Web at *http://www.nmfs.noaa.gov/habitat/restoration*, and assistance in refining the objectives and/or selecting appropriate parameters is available from NOAA staff working with the ORI (see **FOR FURTHER INFORMATION CONTACT**).

NOAA will consider funding more than one project under a single award, however all projects should be sufficiently developed as per the guidelines and information requirements listed in this document for an application to be competitive, and all projects should be able to be completed within the award period specified below.

Funding Availability

This solicitation announces that funding of up to $6,000,000 is expected to be available for ORI Project Grants in FY 2007. NOAA anticipates that typical project awards will range from $50,000 to $250,000. Applications requesting less than $30,000 or more than $1,000,000 from ORI will not be accepted under this solicitation. To help expedite the implementation of on-the-ground components of barrier removal projects in 2007, up to $1,000,000 may be available in 2006 from a related NOAA grant program to support feasibility, engineering, and/or design elements of a small number of projects where the same application also seeks funding for on-the-ground removal activities. NOAA does not guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating barrier removal projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the ORI by Congress.

NOAA anticipates that between 30 and 50 awards will be made as a result of this solicitation. 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 document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

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 dam and barrier removal activities to restore fisheries habitat.

Catalogue of Federal Domestic Assistance (CFDA)

11.463, Habitat Conservation

Eligibility

Eligible applicants are institutions of higher education, other non-profits, industry and commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments whose projects have the potential to benefit NOAA trust resources. Applications from Federal agencies or employees of Federal agencies will not be considered. Federal agencies are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic-serving institutions, tribal colleges and universities, and institutions that work in under served areas. The ORI

encourages proposals from or involving any of the above institutions.

Cost Sharing or Matching Requirements

A major goal of the ORI will be to provide seed money for projects that leverage funds and other contributions from a broad public and private sector to implement locally important barrier removals to benefit living marine and coastal resources. To this end, applicants are encouraged to demonstrate a minimum 1:1 non-Federal match for ORI funds requested to conduct the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible. Applicants with less than 1:1 match will not be disqualified, however, applicants should note that cost sharing is an element considered in Evaluation Criterion 14: ''Project Costs.''

Match to NOAA funds can come from a variety of public and private sources and can include in-kind goods and services and volunteer labor. Federal funds are not considered matching funds. Applicants are permitted to combine contributions from additional non-Federal partners in order to meet the 1:1 match expected, as long as such contributions are not being used to match any other funds. Applicants are also permitted to apply federally negotiated indirect costs in excess of Federal share limits.

Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Successful applicants should be prepared to carefully document matching contributions, including the overall number of volunteers and in-kind participation hours devoted to individual barrier removal projects. Letters of commitment for any secured resources that will be used as match for an award under this solicitation should be submitted as an attachment to the application. Applicants should consider the timing of potential match and awards to reflect the fact that the majority of funds will not be available until fiscal year 2007. Match must be applied to the project during the award period.

Intergovernmental Review

Applications under this initiative are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants are required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of the Executive Order. To find out about and comply with a State's process under Executive Order 12372, the names, addresses and phone numbers of participating SPOC's are available on the internet at: *http://www.whitehouse.gov/omb/grants/spoc.html*.

Evaluation and Selection

Reviewers will assign scores to proposals ranging from 0 to 100 points based on the following five standard NOAA evaluation criteria and respective weights specified below.

1. *Importance and Applicability of Proposal* (30 points)

This criterion 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* (30 points)

This criterion 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* (10 points)

This criterion ascertains whether the applicant possesses the necessary education, experience, demonstrated commitment, training, facilities, and administrative resources to accomplish the project.

4. *Project Costs* (15 points)

This criterion evaluates the project's budget to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach, Education and Community Involvement* (15 points)

NOAA assesses whether the project provides a focused and effective education and outreach strategy regarding NOAA's mission.

Applications will be screened by NOAA staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Applications that present narrative information in the same order as the evaluation criteria set out above are likely to be more competitive, as reviewers will be more easily able to identify information that directly translates to scoring. Eligible barrier removal proposals will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project proposed and may request evaluations from other NOAA offices, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector barrier removal experts who have knowledge of a specific applicant or project. Proposals also will be reviewed by NOAA regional and headquarters staff to determine how well they meet the stated aims of the ORI, and how well the proposal meets the goals of the NOAA Office of Habitat Conservation (OHC) and the NOAA Habitat Program as these goals are incorporated into the evaluation criteria.

Applications for barrier removal projects will be evaluated by at least three individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights listed in this solicitation and described in detail in the Federal Funding Opportunity. The reviewers will independently evaluate each application and provide a score. Composite project scores, a rank order of applications, and reviewer comments and will be presented to the Director of the NOAA Restoration Center (Director). The Director, in consultation with OHC staff, will select the proposals to be recommended to the Grants Management Division (GMD) for funding and will determine the amount of funds available for each approved proposal. The proposals shall be recommended in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. The availability of funding;

2. The balance/distribution of funds: (a) geographically, (b) by type of institutions, (c) by type of partners, (d) by research areas, and (e) by project types;

3. Duplication of other projects funded or considered for funding by NOAA and/or other Federal agencies;

4. Initiative priorities and policy factors as set out in the full funding opportunity available on grants.gov;

5. The applicant's prior award performance;

6. Partnerships and/or participation of targeted groups; and

7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before funding recommendations are acted upon by GMD.

Hence, awards may not necessarily be made to the highest scoring proposals. Unsuccessful applicants will be notified that their proposal was not among those recommended for funding. Unsuccessful applications submitted in hard copy will be kept on file until the close of the following fiscal year then destroyed.

Successful applicants generally will be identified approximately 90–120

days after the close of this solicitation on January 13, 2006. The earliest date for receipt of most awards will be approximately 60 days after the 2007 fiscal year appropriation is enacted, when all NOAA/applicant final negotiations and NEPA analysis and documentation supporting cooperative agreement activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed barrier removal activities; NOAA suggests reasonable start dates of winter/spring 2007.

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 website: *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 and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

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.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this initiative fails to receive funding or is 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. Recipients and sub-recipients are subject to all Federal laws, agency policies, regulations and procedures applicable to Federal financial assistance awards.

Paperwork Reduction Act

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046 and 0605–0001 respectively. 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

It has been determined that this notice is 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: October 26, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 05–21617 Filed 10–26–05; 1:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102505A]

Endangered Species; File No. 1450

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Jane Provancha, Dynamac Corporation, 100 Spaceport Way, Cape Canaveral, FL 32920, has been issued a permit to take green (*Chelonia mydas*) and loggerhead (*Caretta caretta*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On January 26, 2004, notice was published in the **Federal Register** (69 FR 3568) that a request for a scientific research permit to take green and loggerhead sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit holder has been authorized to conduct research on green and loggerhead sea turtles in the waters of Mosquito Lagoon, Florida. Turtles will be captured in a large mesh (9 in/22 cm) tangle net and retained on a vessel for the collection of morphometric data, flipper and PIT tagging, photographs, blood sampling,

lavage, and release. Forty sub-adult green and 15 loggerhead sea turtles of all sexes will be captured annually. Twelve of the 40 captured green sea turtles will have sonic transmitters glued to the carapace. The purpose of the research will be to provide a basic understanding of the abundance, location, and movement of sea turtles within the research area. The duration of this permit is five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 25, 2005.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–21619 Filed 10–28–05; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

2006 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Public Law 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 2006 in the amount of $7,215,490.00. All requests for information and applications for grants should be received by 31 December 2005 and addressed to: Frederick J. Lindstrom, Assistant Secretary/NCACA Program Administrator, Commission of Fine Arts, National Building Museum, Suite 312, 401 F Street, NW., Washington, DC 20001–2728. Phone: 202–504–2200.

Deadline for receipt of grant applications is 1 March 2006.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for a grant, organizations must be located in the District of Columbia, must be non-profit, non-academic institutions of demonstrated national repute, and must have annual incomes, exclusive of federal funds, in excess of one million dollars for each of the past three years. Organizations seeking grants must provide a Dun and Bradstreet (D&S) Data Universal Numbering System (DUNNS) number when applying.

Frederick J. Lindstrom,

Assistant Secretary and NCACA Program Administrator.

[FR Doc. 05–21603 Filed 10–28–05; 8:45 am]

BILLING CODE 6330–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 November 2005 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 2001–2728. Items of discussion affecting the appearance of Washington, DC may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http:www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 25 October, 2005.

Thomas Luebke,

Secretary.

[FR Doc. 05–21604 Filed 10–28–05; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense; Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Missile Defense Agency, the Defense Field Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Sandra Burrell, Executive and Political Personnel Division, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 693–8347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB: Specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective October 31, 2005.

Office of the Secretary of Defense

Chairperson

Nancy Spruill
Robert Nemetz
Gail McGinn
Mary George
Cheryl Roby
Joyce France
David Pauling
William Lowry
Paul Hanley
April Stephenson
Paul Koffsky
Claretta Merkey
John Landon
Frank Anderson
Janet Felts
Jeanne Farmer
Eric Coulter
Jeanne Fites
LeAntha Sumpter
Ellen Embrey
Bill Lehr
Timothy Morgan
Jennifer Buck
Ann Reese
Keith Webster
Jim Russell
Bob Skalamara
Ken Handelman
Caryn Hollis
Alan Liotta
Robert Newberry
Tom Lavery
Marilee Fitzgerald
Joseph Angello
Mike Kern
Scott Comes
Jim Bexfield
Anne O'Connor
Kenneth Catlow

Scott Comes
Beth McCormick

Dated: October 25, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–21609 Filed 10–28–05; 8:45am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7990–6]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html.* The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. Although the part 63 NESHAP and section 111(d) of the Clean and Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with more than one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 58 such documents added to the ADI on August 19, 2005. The subject, author, recipient, date, header and a brief abstract of each letter and memorandum are listed in this notice. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/assistance/applicability.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on August 19, 2005; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI DETERMINATIONS UPLOADED ON AUGUST 19, 2005

Control	Category	Subpart	Title
M050020	MACT	RRR	Treatment of New In-Line Fluxer as a New Unit.
M050021	MACT	XXXX	Tire Retreading Operations.
M050022	MACT	HH, HHH	Separating Single Individual Surface Sites.
M050023	MACT	UUU	Temporary Alternative Monitoring Plan.
M050024	MACT	CC	Alternative Reporting Period.
M050025	MACT	AA	Clarification of Cooling Tower Requirements.
M050026	MACT	LLL	Opacity Limit for Commingled Emission Streams.
M050027	MACT	LLL	Opacity Limit for Commingled Emission Streams.
M050028	MACT	VVVV	Classification of a Resin as a Production Resin.
M050029	MACT	A, T	Degreaser No Longer Using Regulated Solvent.
M050031	MACT	RRR	Holding Furnaces Regulated as Group 2 Furnaces.
M050032	MACT	RRR	Sweat Furnace.
M050033	MACT	RRR	Die Caster Not Operating a Scrap Dryer.
M050034	MACT	RRR	Clarification of Visible Emission Observations.

ADI DETERMINATIONS UPLOADED ON AUGUST 19, 2005—Continued

Control	Category	Subpart	Title
M050035	MACT	ZZZZ	Applicability of RICE to Units Less than 500 Brake Horsepower.
Z050004	NESHAP	N	Glass-Melting Furnaces Used for R&D Purposes.
Z050005	NESHAP	C	Emission Test Waiver for Incinerator.
Z050006	NESHAP	FF	Alternative Monitoring Plan for Dual Purpose Valves.
0500019	NSPS	WWW	Clarification on Treatment System.
0500020	NSPS	Dc	Alternative Recordkeeping for Boiler Fuel Usage.
0500021	NSPS	J	Processing Transmix.
0500022	NSPS	Dc	Alternative Recordkeeping for Boiler Fuel Usage.
0500023	NSPS	Dc	Recordkeeping Variance.
0500024	NSPS	Db	Waiver of NO_X Monitoring During Boiler Startup.
0500025	NSPS	OOO, UUU	Processing of Fused Silica.
0500026	NSPS	LL	Relocation of Iron Ore Concentrate.
0500027	NSPS	PPP	Alternative Monitoring for Scrubber.
0500028	NSPS	Db, Dc	Fuel Supplier Certifications.
0500029	NSPS	Db, Dc	Boiler Derate Proposal.
0500030	NSPS	Dc	Alternative Monitoring Proposals for Opacity and SO_2.
0500031	NSPS	BBB	Tire Retreading Operations.
0500032	NSPS	DD	Use of Grain Storage Capacity to Determine Applicability.
0500033	NSPS	J	Alternative Monitoring Plan for Enclosed Flare.
0500034	NSPS	Db	Applicability of Percent Reduction and Emission Rate Limits.
0500035	NSPS	Kb	Alternative Method for Defining Maximum True Vapor Pressure.
0500036	NSPS	A, Db	Wood Fired Boiler NO_X Limits and Required Monitoring.
0500037	NSPS	J	Alternative Monitoring Plan for Gas Turbines.
0500038	NSPS	J	Alternative Monitoring Plan for Caustic Treating Plant.
0500039	NSPS	J	Soil Vapor Stream/Regenerator Vent Gas Stream.
0500040	NSPS	GG	Custom Fuel Monitoring Schedule.
0500041	NSPS	A, J	Temporary Alternative Monitoring Plan.
0500042	NSPS	J	Sulfur Pits & Storage Tanks, Liquid Sulfur Loading Stations.
0500043	NSPS	A, J	Alternative Monitoring Plan for Heaters & Boilers.
0500044	NSPS	A, J	Alternative Monitoring Plan for Reformer Heater.
0500045	NSPS	A, J	Alternative Monitoring Plan for Loading Facility.
0500046	NSPS	A, J	Alternative Monitoring Plan for Fuel Gas Streams.
0500047	NSPS	A, J	Alternate Span Value for Sulfur Recovery Unit.
0500049	NSPS	VV	Alternative Monitoring for Leak Detection.
0500050	NSPS	PPP	Alternative Monitoring Procedure for Scrubber.
0500051	NSPS	Db, Dc	Boiler Derate Proposal.
0500052	NSPS	UUU	Alternative Monitoring and Test Waiver for Scrubber.
0500053	NSPS	Dc	Fuel Recordkeeping Variance.
0500054	NSPS	Dc	Alternative Recordkeeping Frequency for Fuel Usage.
0500055	NSPS	KK	Waiver of Applicability for Storage Silo Vents.
0500056	NSPS	UUU	Applicability of Sand Reclamation Processes in Foundry I.
0500057	NSPS	LLL	Alternative Monitoring Request.
0500058	NSPS	Y	Charcoal Briquet Manufacturing.
0500059	NSPS	Db	Thermal Oxidizer-Heat Recovery Steam Generators.

Abstracts

Abstract for [M050020]

Q: Is a new in-line fluxer at ALCOA's plant in Massena, New York, considered a ''new source'' under 40 CFR part 63, subpart RRR?

A: Yes. EPA has determined that the proposed new in-line fluxer would be considered a separate secondary aluminum processing unit (SAPU) from the existing SAPU and therefore, a new emission unit or ''new source'' under 40 CFR part 63, subpart RRR.

Abstract for [Z050004]

Q: Would two new, continuous glass-melting furnaces, to be used for research and development purposes at Corning's Sullivan Park facility, be subject to the requirements in 40 CFR part 61, subpart N?

A: Yes. Any glass-melting furnace that uses commercial arsenic as a raw material is subject to the requirements in 40 CFR part 61, subpart N.

Abstract for [0500019]

Q: Are combustion engines that process treated gas and that meet the treatment system requirements in New Source Performance Standard subpart WWW, 40 CFR 60.752(b)(2)(iii)(C), subject to the control requirements in 40 CFR 60.752(b)(2)(iii)(B)?

A: No. As long as the treated gas meets the treatment system requirement in 40 CFR 60.752(b)(2)(iii)(C), the combustion engines are not subject to the control requirements in 40 CFR 60.752(b)(2)(iii)(B).

Abstract for [0500020]

Q: Will EPA approve an alternative monitoring and recordkeeping request by First Quality Tissue in Lock Haven, Pennsylvania, for monitoring and

recording natural gas usage by seven small boilers subject to 40 CFR part 60, subpart Dc?

A: Yes. EPA will approve monthly monitoring of fuel usage as opposed to daily monitoring because of the small size of the boilers in question and the very clean fuel they use.

Abstract for [0500021]

Q: Does the processing of transmix at the Heath Oil facility in Oil City, Pennsylvania, subject the facility to the requirements of 40 CFR part 60, subpart J?

A: No. If the facility does not process crude oil, does not have the physical capability of processing crude oil, and only deals with products that have already been produced by a petroleum refinery, then the operation does not meet the definition of a ''petroleum refinery'' and is not subject to the New Source Performance Standard subpart J requirements.

Abstract for [0500022]

Q: Will EPA approve an alternative recordkeeping request, under 40 CFR part 60, subpart Dc, for a small boiler burning only clean fuels at the Kemp Foods facility in Lancaster, Pennsylvania?

A: Yes. EPA will approve the taking of monthly, rather than daily, readings of natural gas usage for the small boilers at the Kemp Foods facility under NSPS subpart Dc.

Abstract for [0500023]

Q: Will EPA allow, under 40 CFR part 60, subpart Dc, the U.S. Navy to record boiler fuel usage on a monthly, rather than daily, basis at seven boilers located in three locations in the Tidewater Region of Virginia?

A: Yes. EPA agrees to the proposed recordkeeping frequency change given that the seven small boilers in question combust only very clean fuels and EPA has already granted this type of request in other areas of the country to other facilities.

Abstract for [0500024]

Q: Will EPA waive, under 40 CFR part 60, subpart Db, nitrogen oxide (NO_X) monitoring during boiler startups on mixed fuels for the #5 spreader stoker boiler at the University of Virginia in Charlottesville, Virginia?

A: No. EPA will not waive the requirement under NSPS subpart Db to monitor NO_X emissions. However, for the short period that mixed fuels are being combusted, it will allow compliance to be maintained with the coal standard rather than the natural gas standard.

Abstract for [0500025]

Q: Will 40 CFR part 60, subparts OOO and UUU apply to a fused silica crucible manufacturing process using grinding mills and dryers and kilns at the Ceradyne facilities in Scottdale and Clarkston, Georgia?

A: No. Because fused silica is not a nonmetallic mineral, the processing of fused silica is not subject to New Source Performance Standard subparts OOO and UUU.

Abstract for [0500026]

Q: If Tennessee Minerals LLC were to remove iron ore concentrate from the site of an old mining/metallurgical operation in Copperhill, Tennessee, would the operation be subject to 40 CFR part 60, subpart LL?

A: No. Because the proposed operation would not produce a metallic mineral concentrate from ore, it would not meet the New Source Performance Standard subpart LL definition of a metallic mineral processing plant.

Abstract for [0500027]

Q: Will EPA approve, under 40 CFR part 60, subpart PPP, monitoring pressure at the water supply pump for a scrubber at the Owens Corning facility in Fairburn, Georgia?

A: No. EPA will not approve this request for alternative monitoring. To ensure ongoing compliance, it is necessary that the water flow rate be monitored because it is possible that the pressure at the pump outlet remains unchanged while the flow rate to the washing system has decreased.

Abstract for [0500028]

Q: Will EPA allow, under 40 CFR part 60, subparts Db and Dc, a one-time certification of fuel sulfur content for affected facilities that use very low sulfur fuel oil, rather than requiring the maintenance of records of fuel oil sulfur content for each shipment of fuel delivered?

A: No. EPA will not allow this alternative recordkeeping. Affected facilities must comply with the New Source Performance Standard subparts Db and Dc requirements concerning fuel oil sulfur certifications.

Abstract for [0500029]

Q: Will EPA approve a boiler derate proposal, under 40 CFR part 60, subpart Db, that is based on changes made to limit the fuel feed rate?

A: No. EPA will not approve this boiler derate proposal under New Source Performance Standard subpart Db because it is based only on a reduction in the fuel feed rate and does not result in a reduction in boiler capacity, thus failing to comply with EPA's policy on derates.

Abstract for [Z050005]

Q: Will EPA grant a waiver from the emission testing requirements of 40 CFR part 61, subpart C for the incinerator at the Duratek Services facility in Oak Ridge, Tennessee, which has submitted data to demonstrate that the source is in compliance with the standard?

A: Yes. Because the information supplied with the waiver request indicates that the company will comply with the National Emission Standards for Hazardous Air Pollutants subpart C, a waiver of testing requirements was determined to be appropriate.

Abstract for [0500030]

Q1: Will EPA approve an alternative monitoring request based on EPA Reference Method 9 testing data instead of using a continuous opacity monitoring system, under 40 CFR part 60, subpart Dc, for a boiler using residual oil as a backup fuel at Premium Standard Farms in Clinton, North Carolina?

A1: No. The proposed alternative monitoring procedure for opacity will need to be modified to be consistent with previous EPA approvals for similar operations with an annual capacity factor of 10 percent, as described in the EPA's response.

Q2: Does EPA approve the request to verify compliance with the sulfur dioxide emission standard in 40 CFR 60.42c(d) by the use of fuel supplier certifications and maintaining fuel usage records on a monthly basis?

A2: No. Since compliance with the fuel sulfur limit in New Source Performance Standard subpart Dc is determined on a 30-day rolling average basis, compliance cannot be determined for residual oil-fired units unless daily fuel usage records are available.

Abstract for [0500031]

Q: Are tire retreading and repair operations conducted by Snider Tire, Incorporated in Greensboro, North Carolina, and Parrish Tire Company in Yadkinville, North Carolina, subject to the requirements in 40 CFR part 60, subpart BBB?

A: No. The requirements in New Source Performance Standard subpart BBB do not apply since the operations do not produce new tires.

Abstract for [M050021]

Q: Are tire retreading and repair operations conducted by Snider Tire, Incorporated in Greensboro, North Carolina, and Parrish Tire Company in Yadkinville, North Carolina, subject to

the requirements in 40 CFR part 63, subpart XXXX?

A: No. The requirements in 40 CFR part 63, subpart XXXX do not apply because the operations are not located at, nor are they a part of, a major source of hazardous air pollutants.

Abstract for [0500032]

Q1: Is tempered grain storage capacity counted toward total storage capacity for the purposes of 40 CFR part 60, subpart DD?

A1: Yes. Dried corn, dropped into ''tempering'' bins, may fracture and break. However, if no chemical processing or milling has yet occurred, the tempering bins serve as additional storage prior to the germination step, and are included in the total storage capacity for the purposes of New Source Performance Standard (NSPS) subpart DD.

Q2: If storage capacity increases at the facility, but there is no increase to the hourly grain handling capacity, would a facility be exempt under 40 CFR 60.304(b)(4) of NSPS subpart DD?

A2: The modification exemption under 40 CFR 60.304(b)(4) applies to affected facilities at the plant that existed prior to the date that NSPS subpart DD applied. Therefore, this modification exemption does not apply to the affected facilities that were constructed at the time the grain storage capacity reached one million bushels or subsequent to that time.

Q3: Do silos need to be tested and equipped with baghouses under NSPS subpart DD?

A3: No. These are not requirements of NSPS subpart DD. However, applicable local and state requirements may apply.

Abstract for [Z050006]

Q1: Do tank and oil/water separator pressure/vacuum relief valves at the wastewater treatment plant of the Flint Hills Resources refinery in Rosemount, Minnesota, function as pressure relief devices or as dilution air openings under the benzene waste operations National Emission Standards for Hazardous Air Pollutants, 40 CFR part 61, subpart FF?

A1: Because the pressure/vacuum relief valves relieve excess pressure in the closed vent system and allow dilution air to enter the closed vent system, they are both pressure relief devices and dilution air openings under the 40 CFR part 61, subpart FF.

Q2: Can these pressure/vacuum relief valves meet all the requirements of 40 CFR 61.343(a)(1)(i) and 61.347(a)(1)(i)?

A2: No. When the pressure/vacuum relief valves open to relieve excess pressure, the pressure in the closed vent system is greater than 2.0 inches water column above atmospheric, and, thus, the continuous monitoring requirement in 40 CFR 61.343(a)(1)(i)(C)(3) and 61.347(a)(1)(i)(C)(3) is not met.

Q3: Will EPA approve, under 40 CFR part 61, subpart FF, the refinery's alternative monitoring plan to: (a) design the pressure/vacuum relief valves to open only under a negative pressure of 0.5 inch water column or a positive pressure of 2.0 inches; (b) inspect the valves quarterly to verify proper operation; and (c) monitor the valves semiannually by the method specified in 40 CFR 61.355(h)?

A3: Yes. EPA will approve the alternative monitoring plan under 40 CFR part 61, subpart FF, with the condition that an instrument reading greater than 500 ppm above background indicates detectable emissions from the pressure/vacuum relief valves.

Abstract for [0500033]

Q: Will EPA allow Flint Hills Resources (FHR) Pine Bend Refinery in Rosemount, Minnesota, to amend, under 40 CFR part 60, subpart J, an existing alternative monitoring plan for a Zink Flare to include a new product, energy fortified diesel?

A: Yes. EPA will allow this amendment of the alternative monitoring plan because the facility has followed the Refinery Fuel Gas (RFG) guidance and has submitted all necessary information regarding energy fortified diesel. Because the facility loads only gasolines that meet their product specifications for sulfur content, the RFG Guidance does not require any further hydrogen sulfide monitoring on the gasoline loading rack off gas when FHR uses the Zink Flare.

Abstract for [0500034]

Q1: Do both the 90 percent sulfur dioxide reduction requirement and the 1.2 lbs/mmBtu sulfur dioxide limit apply to coal fired boilers subject to 40 CFR part 60, subpart Db?

A1: Yes. New Source Performance Standard (NSPS) subpart Db requires both a 90 percent sulfur dioxide reduction and a sulfur dioxide emission limit of 1.2 lbs/mmBtu.

Q2: If both the 90 percent sulfur dioxide reduction requirement and the 1.2 lbs/mmBtu sulfur dioxide limit apply to coal fired boilers, is it possible to get a waiver of the former for sources using very low sulfur coal?

A2: No. A waiver of the 90 percent sulfur dioxide reduction requirement is not allowed under NSPS subpart Db.

Abstract for [M050022]

Q: How can a single individual surface site be separated into a single 40 CFR part 63, subpart HH facility and a 40 CFR part 63, subpart HHH facility?

A: The point of custody transfer at a natural gas processing plant is where the natural gas enters the pipeline for transmission, and is also the point where the Maximum Achievable Control Technology standard subpart HHH applicability begins. Any equipment upstream of the pipeline is subject to 40 CFR part 63, subpart HH.

Abstract for [0500035]

Q: Will EPA allow the Trenton Agri Products ethanol facility in Trenton, Nebraska, to use Tanks 4.0 Software as the alternative method of defining ''maximum true vapor pressure'' under 40 CFR part 60, subpart Kb?

A: No. Although the Tanks 4.0 Software is a valuable tool in determining emissions, it is not the correct tool in determining applicability of the New Source Performance Standard subpart Kb requirements to an ethanol tank, and thus it will not be allowed for this purpose.

Abstract for [0500036]

Q1: What nitrogen oxide (NO_X) limits apply under 40 CFR part 60, subpart Db, to the two 260 mm Btu/hr wood waste-fired boilers at the Burney Forest Products (BFP) facility in the Shasta County Air Quality Management District (AQMD), that are capable of combusting natural gas and do not have a 10 percent natural gas capacity factor limit?

A1: Until BFP obtains a 10 percent natural gas capacity factor limit that is federally enforceable, the facility will be subject to the NO_X limit of 130 ng/J (0.30 lb/million Btu) found at 40 CFR 60.44b(d).

Q2: Is a NO_X continuous emissions monitoring system (CEMS) required under 40 CFR part 60, subpart Db?

A2: Yes. BFP is required to operate a NO_X CEMS until the facility obtains a 10 percent natural gas capacity factor limit. After it obtains a federally enforceable 10 percent natural gas capacity factor limit, the facility will no longer be required under New Source Performance Standard (NSPS) subpart Db to operate the NO_X CEMS, and it will no longer be subject to the NO_X limit at 40 CFR 60.44b(d). It should be stressed that, at all times, BFP has been and will remain subject to both the NSPS subpart Db opacity limit and the NO_X limit and the required NO_X monitoring contained in the prevention of significant deterioration (PSD) and Title V Permits issued by the Shasta County AQMD.

Q3: Assuming that the NO_X limits prescribed in 40 CFR 60.44b(d) apply only when BFP is simultaneously combusting natural gas with wood, how should the data acquisition and handling system (DAHS) calculate the nitrogen oxides (NO_X) 30-day rolling average when the facility is combusting only wood or only natural gas?

A3: The assumption that the NO_X limits prescribed in 40 CFR 60.44b(d) apply only when BFP is simultaneously combusting natural gas with wood is incorrect.

Q4: If 40 CFR 60.44b(d) does not establish NO_X emission limits when combusting wood or natural gas alone, should the NO_X values recorded by the CEMS during periods where wood or natural gas only is combusted be deleted or disregarded in calculating the 30-day average under 40 CFR 60.46b(c) or (d)?

A4: NO_X values should be recorded by the CEMS during periods when wood is combusted, when natural gas is combusted, or when there is simultaneous combustion. No NO_X values should be deleted or disregarded in calculating the 30-day average under 40 CFR 60.46b(c) or (d), or 60.49b(g).

Q5: What is the applicable span value for BFP's NO_X analyzers under 60 CFR 60.48b(e) when the facility simultaneously burns wood and natural gas? Also, since the facility has to meet a state NO_X limit much lower than the 0.30 lb/million Btu limit specified in NSPS subpart Db, please verify that it is acceptable to use a lower span value of 250 ppm that has been specifically approved by the AQMD.

A5: The span value for the NO_X analyzers should be 1.5 to 2.5 times greater than the permitted limit of 250 ppm. By ''state NO_X limit'', EPA assumes that BFP is referring to the emission limits in its prevention of significant deterioration (PSD) permit, which Shasta County AQMD issued pursuant to delegated PSD authority. The PSD permit requirements are also federal requirements. The NO_X limit in Condition 1 of the Title V permit is 250 ppm, although the data submitted by BFP to EPA indicates that the emissions are normally at 100 ppm or less. Specifically, source tests in the year 2002 and the year 2003, showed a range of 60 to 80 ppm NO_X for each of the boilers, and the monthly reports to the County indicate that these boilers have had no daily NO_X averages above 80 ppm since the year 1999.

Q6: Please clarify whether the NO_X CEMS installed in the boilers to meet the 40 CFR part 60, subpart Db monitoring requirements would be considered ''continuous compliance monitors'' under 40 CFR 60.46b(e)(3) or ''excess emission monitors'' under 40 CFR 60.46b(e)(4), based on the fact that the maximum boiler heat input capacity from fossil fuel firing is only 90 million Btu/hr.

A6: The NO_X CEMS would be subject to 40 CFR 60.46b(e)(3), unless BFP obtains a federally enforceable requirement that limits its annual capacity for natural gas to 10 percent or less. If BFP obtains such a limit, then the NSPS subpart Db NO_X limit does not apply, and the NO_X CEMS would no longer be subject to the continuous compliance monitoring requirements under the NSPS subpart Db regulations. However, the NO_X CEMS would still be considered continuous compliance monitors under the PSD/Title V and therefore, subject to the Best Achievable Control Technology emission limits.

Q7: Please clarify which reports would be applicable to these boilers under 40 CFR 60.49b and 60.7.

A7: EPA assumes that this question primarily concerns the obligations to provide reports concerning NO_X emissions (although opacity reports are required by 40 CFR 60.49b(f)). The time period for the required initial notifications and initial testing has long since passed [40 CFR 60.49b(a) and (b)]. BFP is subject to the reporting and recordkeeping requirements in NSPS subparts A and Db. These include 40 CFR 60.49b(d), 60.49b(g), 60.49b(I), and 60.7.

Abstract for [0500037]

Q: Will EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart J, for the butane that is generated at BP's Carson, California refinery and combusted at the Watson Cogeneration Company (WCC) turbines?

A: Yes. EPA will approve this alternative monitoring plan under New Source Performance Standard subpart J. BP proposed that weekly grab samples of the butane be analyzed for sulfur content with ASTM Method D5504–94, which has been incorporated by reference into 40 CFR part 75, subpart A.

Abstract for [0500038]

Q: Will EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart J, for the vent gas stream from the caustic treating plant that is incinerated at the thermal oxidizer at the Chevron refinery in El Segundo, California?

A: Yes. EPA will approve an alternative monitoring plan under New Source Performance Standard subpart J. There are no crossover points that would allow sour gas to be combined with the vent gas. The caustic alkalinity is maintained at greater than 5 percent which keeps the hydrogen sulfide (H_2S) in the vent gas stream at less that 0.2 parts per million. Chevron has submitted 14 consecutive days of sample results that document the low H_2S content of this fuel gas stream.

Abstract for [0500039]

Q: Will EPA approve alternate monitoring plans, under 40 CFR part 60, subpart J, for the recovered soil vapor stream and the continuous catalytic reforming unit regenerator vent gas stream at the Chevron facility in El Segundo, California?

A: Yes. EPA determines that alternative monitoring plans for these streams are appropriate under New Source Performance Standard subpart J as long as the representative process parameter functions serve as indicators of a stable and low hydrogen sulfide concentration for the streams.

Abstract for [0500040]

Q: Will EPA approve a custom fuel monitoring schedule, under 40 CFR part 60, subpart GG, for a combustion turbine that combusts pipeline quality natural gas at the Corona Energy Partners (Corona) facility in Corona, California?

A: Yes. In accordance with its longstanding policy, and because Corona has proposed to sample the sulfur content of the fuel with South Coast Air Quality Management District Method 307–91, EPA will approve this custom fuel monitoring schedule under NSPS subpart GG.

Abstract for [M050023]

Q: Will EPA allow ExxonMobil, under 40 CFR part 63, subpart UUU, to use EPA Method 9 readings as an alternative to continuous opacity monitoring on the bypass stack of the fluid catalytic cracking unit at its Torrance, California refinery?

A: Yes. EPA will allow ExxonMobil to use Method 9 readings under 40 CFR part 63, subpart UUU as an alternative for bypass stacks as long as the control device for particulate matter is not bypassed. This approval is for a limited period of time to allow ExxonMobil to propose and EPA to evaluate the feasibility of a more permanent monitoring solution.

Abstract for [0500041]

Q: Will EPA allow ExxonMobil, under 40 CFR part 60, subpart J, to use EPA Method 9 readings as an alternative to continuous opacity monitoring on the bypass stack of the fluid catalytic cracking unit at its Torrance, California refinery?

A: Yes, EPA will allow ExxonMobil to use Method 9 readings under New Source Performance Standard subpart J as an alternative for bypass stacks as long as the control device for particulate matter is not bypassed. This approval is for a limited period of time to allow ExxonMobil to propose and EPA to evaluate the feasibility of a more permanent monitoring solution.

Abstract for [0500042]

Q: Which requirements of 40 CFR part 60, subpart J are applicable to sulfur pits, sulfur storage tanks, and liquid sulfur loading stations?

A: The emissions from a sulfur recovery plant's sulfur pits are subject to the 40 CFR 60.104(a)(2) limit regardless of where the emissions are routed. The emissions from the sulfur storage tanks and the sulfur loading racks are subject to the 40 CFR 60.104(a)(1) limit if they are combusted at a refinery fuel gas combustion device as defined in 40 CFR 60.101(g).

Abstract for [0500043]

Q: Will EPA allow an alternative monitoring plan, under 40 CFR part 60, subpart J, for four boilers and heaters at the Shell Bakersfield refinery?

A: Yes. EPA approves the proposed alternative monitoring plan, which entails calculating the hydrogen sulfide concentration of the mixed refinery fuel gas stream, provided that Shell certifies all flow meters and implements a quality assurance and quality control program for the flowmeters.

Abstract for [0500044]

Q: Will EPA approve annual source testing and daily detector tube sampling of the pressure swing absorption (PSA) purge gas under 40 CFR part 60, subpart J, for the Shell refinery in Wilmington, California?

A: Yes. Shell's proposal for measuring the hydrogen sulfide (H_2S) concentration with the threshold value of 1 ppm at the outlet of the first Zinc Oxide bed will ensure that the PSA purge gas will meet the NSPS subpart J limit of 160 ppmv. Because the first Zinc Oxide bed will be replaced upon breakthrough at 1 ppmv, it is highly unlikely that the H_2S concentration at the outlet of the second Zinc Oxide bed will ever exceed 0 ppmv.

Abstract for [M050024]

Q: Will EPA allow an alternate reporting period, under 40 CFR part 63, subpart CC, for the Valero refinery in Wilmington, California?

A: Yes. EPA will allow the proposed alternate reporting period as long as the proposed reporting period does not alter any of the other requirements of 40 CFR part 63, subpart CC.

Abstract for [0500045]

Q: Will EPA approve an alternate monitoring plan, under 40 CFR part 60, subpart J, for the marine vapor recovery loading facility at the Shell refinery in Martinez, California?

A: Yes. EPA approves the proposed alternative monitoring plan under New Source Performance Standard subpart J with the additional recordkeeping and reporting requirements set out in the determination.

Abstract for [0500046]

Q: Will EPA approve an alternative monitoring plan, under 40 CFR part 60, subpart J, for four fuel gas streams at the Shell refinery in Martinez, California?

A: Yes. EPA will approve alternative monitoring plans for these fuel gas streams under New Source Performance Standard subpart J. However, the representative process parameters for these streams must function as an indicator of a stable and low hydrogen sulfide concentration for the streams.

Abstract for [0500047]

Q: Will EPA approve, under 40 CFR part 60, subpart J, an alternate span setting on a continuous emission monitor (CEM) for its sulfur recovery unit, SRU–4, at the Shell refinery in Martinez, California?

A: Yes. EPA approves the alternate span values of 250 ppm and 2,500 ppm for the CEM for SRU–4 under New Source Performance Standard subpart J. These would be appropriate because the permitted and anticipated stack concentration for the SRU–4 is less than 100 ppm.

Abstract for [M050025]

Q: Is a facility in violation of National Emission Standards for Hazardous Air Pollutants (NESHAP) subpart AA, 40 CFR 63.602(e), if it combines its wet scrubber effluent with other process waters and waste waters, and then routes the combined water through a pile of disposed gypsum and ultimately to the evaporative cooling towers?

A: Yes. Although the scrubber liquid effluent at the facility is being diluted with other process waste waters, the fluoride emissions captured by the wet scrubbers are routed to the evaporative cooling towers where they are stripped off and emitted to the atmosphere. Therefore, the process is a violation of NESHAP subpart AA, 40 CFR 63.602(e).

Abstract for [M050026] and [M050027]

Q: What is the applicable opacity limit under 40 CFR part 63, subpart LLL, when kiln emissions and clinker cooler emissions are commingled in a common stack at the Essroc Portland cement facility in San Juan, Puerto Rico?

A: Where emissions from two affected facilities are simply combined or commingled in a common duct or stack, it is EPA's policy and practice to apply the more stringent opacity limitation. Application of the more stringent limitation is necessary to ensure compliance with each applicable standard. Therefore, the more stringent 10 percent clinker cooler opacity limit applies.

Abstract for [M050028]

Q: Will EPA classify as a ''production resin,'' under 40 CFR part 63, subpart VVVV, a non pigmented resin developed by Cook Composite and Polymers Company in Kansas City, Missouri, that is applied by non-atomizing equipment between the skin layer and bulk laminate of boats, and not directly to the mold surface?

A: Yes. As the new product is not applied directly to the mold surface and is not used to repair molds or prototypes, it does not meet the definitions of ''gel coat'' or ''tooling resin'' in 40 CFR 63.5779. Consequently, due to the product's properties and purpose, it should be classified as a ''production resin'' under the 40 CFR part 63, subpart VVVV.

Abstract for [0500048]

Q: Will EPA accept an alternative opacity monitoring plan for two coal-fired boilers subject to 40 CFR part 60, subpart D, where the continuous opacity monitor had to be removed from service because of water droplet interference from a newly-installed wet-gas scrubber used to remove sulfur dioxide?

A: Yes. EPA will accept this alternative opacity monitoring plan under New Source Performance Standard subpart D. The plan requires continuous monitoring of secondary power at the electrostatic precipitators and liquid flow rate at the wet-gas scrubber.

Abstract for [0500049]

Q: Will EPA approve, under 40 CFR part 60, subpart VV, a monitoring procedure at the Eastman Chemical facility in Kingsport, Tennessee, that uses sensory means (i.e., sight, sound, smell) to identify leaks from equipment that is in acetic acid and/or acetic anhydride service?

A: Yes. The proposed alternative is acceptable under New Source Performance Standard subpart VV. Monitoring results indicate that

equipment leaks are identified more easily through sensory methods than by using Method 21, because of the physical properties (high boiling points, high corrosivity, and low odor threshold) of acetic acid and acetic anhydride, and the process conditions at the plant.

Abstract for [0500050]

Q: Will EPA approve, under 40 CFR part 60, subpart PPP, an alternative monitoring procedure for a scrubber at the Owens Corning facility in Fairburn, Georgia, in which the water pressure at the supply pump, rather than the gas pressure drop across the scrubber and the scrubbing liquid flow rate, is monitored?

A: Additional information concerning the operation of the scrubber and the rationale for the proposed alternative will need to be provided to EPA before a decision can be made.

Abstract for [0500051]

Q: Will EPA approve, under 40 CFR part 60, subparts Db and Dc, a boiler derate proposal from North Carolina Baptist Hospital in Winston-Salem, North Carolina, which is based on changes made to the natural gas burner?

A: Yes. EPA approves the proposed derate method under New Source Performance Standard subparts Db and Dc, as it will reduce the capacity of the boiler and will comply with EPA's policy on derates.

Abstract for [0500052]

Q1: Will EPA approve, under 40 CFR part 60, subpart UUU, an alternative monitoring procedure for a spray tower scrubber at the Short Mountain Silica facility in Mooresburg, Tennessee? The spray tower will control emissions from a fluidized bed dryer. Rather than measuring the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate, the company proposes to monitor the scrubbing liquid supply pressure and flow rate.

A1: Yes. The proposed alternative is acceptable under New Source Performance Standard (NSPS) subpart UUU. Since there is little pressure drop of the gas stream as it passes through the spray tower, pressure drop is not a good indicator of the spray tower efficiency.

Q2: Will EPA waive the requirement, under 40 CFR part 60, subpart UUU, to conduct a performance test for a rotary dryer which serves as a backup for the fluidized bed dryer? The rotary dryer will use the same scrubber used for the fluidized bed dryer, will be used infrequently, and will have half the airflow rate of the fluidized bed dryer.

A2: Yes. A performance test waiver is appropriate under NSPS subpart UUU.

Abstract for [0500053]

Q: Will EPA approve an alternative recordkeeping schedule for boiler fuel usage under New Source Performance Standard subpart Dc for General Electric Transportation's new natural gas-fired boilers at their Erie, Pennsylvania plant?

A: Yes. EPA will approve the change to the recordkeeping frequency because the boilers only combust clean natural gas, are small boilers, and past EPA determinations have allowed a change from daily recordkeeping to monthly recordkeeping under the same set of circumstances.

Abstract for [0500054]

Q: Will EPA approve an alternative fuel usage recordkeeping frequency for small boilers under New Source Performance Standard subpart Dc for the Standard Steel facility in Burnham, Pennsylvania?

A: Yes. EPA approves the monthly recordkeeping alternative proposed by Standard Steel for its Burnham, Pennsylvania, plant for boiler fuel usage because the boilers are small, the only fuel is natural gas, and because this approval is consistent with past Agency determinations on the same subject.

Abstract for [M050029]

Q: Will a vapor degreaser at Tecumseh Products research laboratory in Ann Arbor, Michigan, still be subject to the Maximum Achievable Control Technology (MACT) standard subpart T if the facility replaces trichloroethylene with Leksol, a solvent consisting of 94 weight percent n-propyl bromide?

A: No. Once the facility permanently ceases to use any of the solvents listed in 40 CFR 63.460(a), and certifies that fact in writing, the vapor degreaser will no longer be subject to MACT subpart T. However, if the facility recommences the use of any of these solvents, the degreaser will immediately become subject to the National Emission Standards for Hazardous Air Pollutants, and per 40 CFR 63.9(j), the facility will have to inform EPA within 15 calendar days of the date of the change.

Abstract for [0500055]

Q: C&D Technologies, Incorporated completed construction of a building enclosure around three storage silos, which includes the truck unloading area and silo vents. Are these silo vents still subject to the requirements of 40 CFR part 60, subpart KK?

A: Yes. The enclosure has an exhaust hood and fan that are operating the entire time when a truck is unloading into a storage silo. The exhaust hood and fan route the truck diesel exhaust, uncontrolled and directly, from the enclosure to the atmosphere. Because the fan is taking air from inside the enclosure and venting it to the atmosphere, it is possible that air vented to the atmosphere from the enclosure contains exhaust from the silo vents.

Abstract for [M050030]

Q: Will EPA authorize, under 40 CFR part 63, subpart EEE, the use of data from a destruction and removal efficiency test conducted on a hazardous waste burning cement kiln in lieu of the requirement to conduct a destruction and removal efficiency test on a second hazardous waste burning cement kiln that is located at the same facility?

A: Yes. The company has demonstrated that the two kilns meet the stack test waiver criteria in EPA's February 2004 stack testing guidance. Therefore, EPA approves the request under the Maximum Achievable Control Technology standard subpart EEE.

Abstract for [M050031]

Q: Are the molten aluminum holding furnaces at Mercury Marine in Fond du Lac, Wisconsin, classified and regulated as group 2 furnaces under 40 CFR part 63, subpart RRR?

A: Yes. The furnaces hold molten aluminum prior to injection into die casting machines, do not involve fluxing, and do not provide any other process function, consistent with the rule's definition of a group 2 furnace. Thus, they are subject to the Maximum Achievable Control Technology standard subpart RRR.

Abstract for [M050032]

Q: Is the furnace at GNW Aluminum in Alliance, Ohio, considered a sweat furnace under 40 CFR part 63, subpart RRR?

A: Yes. The furnace has features indicative of a sweat furnace, such as relative small size, allowance for residual iron removal, and tilting to empty the molten aluminum, and is thus subject to the Maximum Achievable Control Technology standard subpart RRR.

Abstract for [M050033]

Q: Is the Hayes Lemmerz International die casting facility in Huntington, Indiana, which originally operated a scrap dryer and five melting furnaces, but has since taken the scrap dryer out of service, still subject to 40 CFR part 63, subpart RRR?

A: No. Maximum Achievable Control Technology standard subpart RRR does

not apply to a die caster that operates furnaces which melt only clean charge, and that does not operate a sweat furnace, thermal chip dryer, or scrap dryer.

Abstract for [M050034]

Q: Under 40 CFR part 63, subpart RRR, may Method 22 visible emission readings for each test run at the Mercury Marine ring crusher in Fond du Lac, Wisconsin, be discontinued after 20 minutes of continuous operation rather than 60 minutes, and not resumed until the rest break exceeds 10 minutes?

A: Yes. Three 20-minute test runs are allowed and required under the Maximum Achievable Control Technology standard subpart RRR. The crusher must be shutdown after 20 minutes of continuous operation because the hopper following the crusher becomes full, and the crusher cannot be restarted without a rest break that exceeds 10 minutes. When the hopper becomes empty, another 20 minute test run is allowed.

Abstract for [0500056]

Q: Are calciners or dryers used in the reclamation of foundry sand subject to New Source Performance Standard (NSPS) subpart UUU?

A: Yes. Calciner and dryers used in the reclamation of foundry sand are subject to NSPS subpart UUU.

Abstract for [0500057]

Q1: Are the emissions from the liquid sulfur storage tanks at the Burlington Resources natural gas sweetening and sulfur recovery operation at the Lost Cabin Gas Plant in Lysite, Wyoming, subject to New Source Performance Standard (NSPS) subpart LLL?

A1: No. Emission from liquid sulfur storage tanks at a natural gas sweetening and sulfur recovery operation are not regulated under NSPS subpart LLL.

Q2: Does performance testing of the tail gas incinerator require the inclusion of the liquid sulfur storage tank vent gas?

A2: No. Liquid sulfur storage tank vent gas does not need to be included in the performance testing of the tail gas incinerator, nor in the sulfur reduction efficiency calculations.

Q3: Does monitoring the tail gas incinerator require inclusion of the sulfur contribution from the liquid sulfur storage tanks?

A3: No. Liquid sulfur storage tank vent gas does not need to be included in the monitoring of the tail gas incinerator, nor in the sulfur reduction efficiency calculations.

Q4: Will EPA approve an alternative monitoring method for the combined sulfur dioxide (SO_2) emissions from the Train 1 tail gas unit and the liquid sulfur storage tanks?

A4: No. EPA will not approve the alternative method proposed for the combined SO_2 emissions from the Train 1 tail gas unit and the liquid sulfur storage tanks.

Abstract for [0500058]

Q1: Is New Source Performance Standard (NSPS) subpart Y applicable to charcoal briquet manufacturing?

A1: If a charcoal briquet manufacturing plant processes more than 200 tons of coal per day and meets the definition of a ''coal preparation plant'' as defined in 40 CFR 60.250, then it would be subject to NSPS subpart Y.

Q2: Does the use of pre-processed coal count toward the 200-ton/day threshold of NSPS subpart Y?

A2: No. The use of coal that is pre-processed off-site would not count toward the 200-ton/day threshold in NSPS subpart Y.

Q3: Is char made from lignite considered to be coal?

A3: EPA cannot provide a response to this question without site-specific information.

Q4: Does NSPS subpart Y apply where no size reduction of coal refuse removal is conducted?

A4: The Agency cannot provide a response to this question without site-specific information.

Abstract for [0500059]

Q1: ICM, Incorporated, in Colwich, Kansas, designs and builds thermal oxidizer heat recovery steam generating system (TO–HRSG) at ethanol plants. Does a thermal oxidizer portion of the TO–HRSG satisfy the definition of a ''duct burner'' in 40 CFR 60.41b?

A1: No. The thermal oxidizer does not satisfy the definition of a ''duct burner'' in 40 CFR 60.41b.

Q2: Are the grains dryers at an ethanol plant part of the combined cycle system and, therefore, part of the affected facility as defined in 40 CFR 60.40b?

A2: No. The grains dryers are separate sources and are not part of the combined cycle system.

Q3: Can the heat input from the grain dryers at an ethanol plant be used to calculate the nitrogen oxide (NO_X)emissions from the affected facility?

A3: No. The heat input from the grains dryers cannot be used to calculate the NO_X emissions from the affected facility.

Abstract for [M050035]

Q: Does the Maximum Achievable Control Technology (MACT) standard subpart ZZZZ apply to reciprocating internal combustion engines with a site-rating of less than 500 brake horsepower located at a major source of hazardous air pollutants?

A: No. MACT subpart ZZZZ does not apply to reciprocating internal combustion engines with a site-rating of less than 500 brake horsepower located at a major source of hazardous air pollutants.

Dated: October 19, 2005.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 05–21625 Filed 10–28–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7991–1]

Notice of the Twelfth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This notice announces the Twelfth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force, consisting of Federal, State, and Tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matters to be discussed at the meeting is the activities of the Sub-Basin Teams and the Reassessment of the Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico. The Action Plan was developed in fulfillment of a requirement of section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Pub. L. 105–383—Coast Guard Authorization Act of 1998) to submit a scientific assessment of hypoxia and a plan for reducing, mitigating, and controlling hypoxia in the Gulf of Mexico. The Action Plan was submitted as a Report to Congress on January 18, 2001, and the eleventh action item is a reassessment of the actions every five years. The public will be afforded an opportunity to provide input to the Task Force during open discussion periods.

DATES: The one day meeting will be held from 8:30 a.m.–4:30 p.m.,

Thursday, December 1, 2005 in Memphis, TN.

ADDRESSES: Please see the website *http://yukon.tetratech-ffx.com/12TFMeeting/* for registration, specific meeting location, and hotel information. The meeting room accommodates approximately 125 people, therefore, registration is required. There is no charge for registration.

FOR FURTHER INFORMATION CONTACT: Katie Flahive, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202) 566–1206; E-mail: *flahive.katie@epa.gov*. For additional information on logistics, registration, and accommodations, contact Ansu John, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, VA 22030; Phone: (703) 385–6000; E-mail: *ansu.john@tetratech-ffx.com.*

Dated: October 25, 2005.

Diane Regas,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 05–21622 Filed 10–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7990–7]

Proposed CERCLA Administrative Agreement; Liberty Industrial Finishing Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Agency's May 24, 1995, ''Guidance on Agreements with Prospective Purchasers of Contaminated Property,'' notice is hereby given of a proposed prospective purchaser agreement (''PPA agreement'') with The Stop & Shop Supermarket Company LLC (''Respondent'') concerning Respondent's ground lease of an approximately 9-acre parcel of real property (the ''Property'') included within the Liberty Industrial Finishing Superfund Site in the Village of Farmingdale, Town of Oyster Bay, Nassau County, New York (the ''Site'') and Respondent's potential use of the Property by construction and operation of a shopping center including a supermarket and fueling facility. Under the PPA agreement, the United States would covenant not to sue or take administrative action against Respondent under section 106 or 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA'') if Respondent becomes an operator of the Property. In consideration, Respondent would perform work at the Site that EPA has valued at approximately $100,000 and will also pay to EPA the amount of $12,500. By publication of this Notice, a thirty (30) day period has been established in which the Agency will accept written comments relating to the PPA agreement. The Agency will consider all comments received and may modify or withdraw its consent to the PPA agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

DATES: Comments must be submitted on or before November 30, 2005.

ADDRESSES: The proposed PPA agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866. A copy of the proposed PPA agreement may be obtained from the individual listed below. Comments should reference the Liberty Industrial Finishing Superfund Site, Nassau County, New York and EPA Index No. CERCLA–02–2005–2005, and should be addressed to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, Telephone: (212) 637–3168.

Dated: October 17, 2005.

William McCabe,

Acting Director, Emergency and Remedial Response Division, Region II.

[FR Doc. 05–21624 Filed 10–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7990–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Enviromental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122 (h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the RSR Corporation Superfund Site, the Murmur Corporation, and the Murmur Leasing Corporation.

The settlement requires the settling parties to pay $278,273 as payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42, U.S.C. 9607. The settling parties also agree to assign and implement institutional controls.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before November 30, 2005.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Barbara Aldridge, 6SF–AC, 1445 Ross Avenue, Dallas, Texas, 75202–2733, or by calling (214) 665–2712. Comments should reference the RSR Corporation Superfund Site, Dallas, Texas, and EPA Docket Number 6–03–05, and should be addressed to Barbara Aldridge at the address listed above.

FOR FURTHER INFORMATION CONTACT: George Malone, 1445 Ross Avenue,

Dallas, Texas 75202–2733 or call (214) 665–8030.

Dated: October 19, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–21623 Filed 10–28–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520). The FTC proposes to issue compulsory process orders to the largest cigarette manufacturers and smokeless tobacco manufacturers in order to obtain information from those companies concerning, inter alia, their sales and marketing expenditures.

DATES: Comments on the proposed information requests must be received on or before November 30, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex G), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to e-mail messages directed to the following e-mail box: *TobaccoReports@ftc.gov*. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed collection of information should be addressed to Michael Ostheimer, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–2699, e-mail: *TobaccoReports@ftc.gov*.

SUPPLEMENTARY INFORMATION: For nearly forty years, the Federal Trade Commission has published periodic reports containing data on domestic cigarette sales and marketing expenditures by the major U.S. cigarette manufacturers. The Commission has published comparable reports on smokeless tobacco sales and marketing expenditures since 1987. Both reports originally were issued pursuant to statutory mandates. After those statutory mandates were terminated, the Commission continued to collect and publish information obtained from the cigarette and smokeless tobacco industries pursuant to section 6(b) of the FTC Act, 15 U.S.C. 46(b).

More recently, the Commission decided to address its information requests to the ultimate parent of each of the leading cigarette and smokeless tobacco manufacturers in order to ensure that no relevant data from affiliated companies go unreported. This change presumably increases the number of separately incorporated entities affected by the Commission's requests.

The FTC proposes to send information requests on an annual basis to the ultimate parent company of each of the five largest cigarette companies and each of the five largest smokeless tobacco companies in the United States (''industry members''). The information requests will seek data regarding, inter alia: (1) The tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the specific amounts spent in each of a number of specified expenditure categories; (3) whether industry members are involved in the appearance of their tobacco products in television shows or movies; (4) how much industry members spend on advertising intended to reduce youth tobacco usage; (5) the events, if any, during which industry members' tobacco brands are televised; and (6) for the cigarette industry, the tar, nicotine, and carbon monoxide ratings of their cigarettes, to the extent they possess such data. The information will be sought using compulsory process under section 6(b) of the FTC Act, 15 U.S.C. 46(b) (hereinafter ''6(b) orders'').

On May 9, 2005, the FTC sought public comment on its proposed information collection requests to the major cigarette and smokeless tobacco manufacturers. 70 FR 24415. Nine comments were received, which are discussed below.[2] Pursuant to the OMB regulations that implement the PRA, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval for the proposed information requests.

Comments received: The FTC received seven comments supporting the collection and reporting of the data in question. Those comments were from: (1) The Tobacco Free Kansas Coalition, Inc.; (2) Michael P. Eriksen, Sc.D., of the Institute of Public Health at Georgia State University; (3) the California Department of Health Services; (4) the San Luis Obispo County Tobacco Control Coalition; (5) the National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention; (6) the National Association of Attorneys General; and (7) a group of 44 public health organizations, including the American Lung Association, the American Medical Association, and the American Public

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] The comments are available at *http://www.ftc.gov/os/comments/pratobaccoreports/index.htm*.

Health Association. In addition, Philip Morris USA filed a comment raising several issues regarding the proposed information collection.[3] Finally, the Commission also received one comment from an individual opposed to the use of federal funds to collect the information at issue.

1. Comments Supporting the Data Collection. The comments from public health and governmental entities supporting the data collection note that the Commission's reports are the only source of comprehensive information about the marketing and promotion activities of the cigarette and smokeless tobacco industries. The Tobacco Free Kansas Coalition, Inc. stated that the data reported by the Commission are essential in trying to establish funding for tobacco prevention and cessation programs. The California Department of Health Services uses the data to assess the rate of expansion of tobacco industry marketing and promotion, in order to prioritize resources among its various tobacco control priorities. The Public Health Service of the Centers for Disease Control and Prevention (PHS–CDC) noted that the Commission's reports are the only data source available for surveillance of industry spending, and are therefore ''essential in monitoring industry tactics regarding advertising, including documenting important shifts such as increases in promotional spending.'' The PHS–CDC also noted that the FTC reports constitute a source of information to monitor industry compliance with restrictions such as the Master Settlement Agreement that resulted from the settlement of 46 states' lawsuits against the tobacco industry, and that the data in those reports are also used to help interpret the results of evaluations of tobacco control programs. The 44 public health organizations stated that the FTC's reports are virtually the only source of reliable information on cigarette and smokeless tobacco marketing and sales, and that they play a ''vital role'' in enabling government officials, organizations and professional communities to do their work.

Some of the commenters supporting continued data collection did recommend changes that they believed would increase the utility of the Commission's reports. The California Department of Health suggested that the data be reported on a state-by-state basis, rather than the national basis that the Commission has always used, and that state-by-state data be further broken down to provide, among other things, company-specific or brand-specific data, and marketing expenditures targeting ethnic populations. The PHS–CDC stated that the utility of the Commission's reports could be increased by the provision of detailed information about individual manufacturers' expenditures, as well as brand-specific or brand-category-specific, state-specific and major-media-market-specific information. The 44 public health organizations similarly suggested in their joint comment, among other things, that the Commission report its data on a state-by-state basis, and, to the extent possible given trade secret and confidentiality concerns, by individual company or brand.

The FTC has determined that even if the cigarette and smokeless tobacco companies are able to report their advertising and marketing expenditures on a state-by-state or regional basis, requiring them to do so at this time would likely increase the burden on those companies without a sufficient increase in the utility of the reports. In addition, with regard to data such as the amount spent to promote individual brands of cigarettes or smokeless tobacco and the amount that a particular company spends to promote all of its products, the FTC is prohibited from disclosing such information while it remains confidential commercial information. 15 U.S.C. 46(f). Accordingly, the FTC does not intend to require reporting on a state-by-state or regional basis or release disaggregated expenditure data.

The 44 public health organizations made a number of additional suggestions. First, the organizations suggested that the FTC provide more detailed information about promotional allowance and retail-value-added expenditures. In 2002, the Commission did in fact revise a number of the categories in which advertising and promotional expenses were to be reported by the manufacturers. Those changes included splitting the ''retail-value-added'' category into two subcategories (retail-value-added involving free cigarettes, and retail-value-added involving free non-cigarette items), and breaking down the ''promotional allowance'' category into four new categories (price discounts, promotional allowances paid to retailers, promotional allowances paid to wholesalers, and other promotional allowances). The public health organizations do not specify what kind of additional information about these expenditure categories they want.

Second, the public health organizations suggest that the FTC collect information from the top nine companies in the smokeless tobacco and cigarette industries. The Commission has traditionally issued its cigarette and smokeless tobacco information requests to the five or six largest companies in each industry. At this time, it is not necessary for the FTC to increase the number of cigarette and smokeless tobacco industry members from whom it will collect information to 18, as suggested by the 44 public health organizations. In 2003, the five cigarette companies from whom the FTC proposes collecting information were responsible for over 90% of cigarette sales, and the five smokeless tobacco companies were responsible for over 95% of smokeless tobacco sales. It is unlikely that collecting information from 18 companies, as opposed to the 10 to 15 companies contemplated by the FTC, would significantly alter the overall picture of the industries because the leading companies also are responsible for most cigarette and smokeless tobacco advertising. In light of the aggregated nature of the information reported, the incremental benefit of collecting information from increasingly small companies would appear to outweigh the burden on those companies.

Finally, the public health organizations made a number of additional suggestions, including a request that the FTC report cigarette company television advertising regarding their charitable activities. The FTC will consider these suggestions when it next issues 6(b) orders to the cigarette and smokeless tobacco companies for sales and marketing expenditure data, bearing in mind not only the potential benefits to those who desire the information, but also the feasibility of requiring the companies to provide that information and the burden of requiring them to do so.

2. *Comment Opposing the Data Collection.* The sole comment opposing the data collection objected to the expenditure of taxpayer money for the purpose of collecting the data in question, stating that ''if the tobacco industry wants it, let them pay for it.'' This comment appears to be based on the erroneous assumption that the Commission collects the data in question for the benefit of the cigarette and smokeless tobacco companies.

3. *Comment of Philip Morris USA.* Philip Morris USA took no position on the proposed collection of information and offered no comment on the FTC staff's estimate of the burden of the proposed collection. It did, however,

[3] Philip Mossis USA was the only cigarette or smokeless tobacco company to submit a comment in response to the Commission's notice.

comment on ways to enhance the quality of the information that the Commission proposes to collect, and on ways to minimize the burden imposed on tobacco companies in responding to the Commission. Specifically, Philip Morris suggested that the Commission: (1) Identify the companies from which it seeks data based on a particular sales volume or market share, instead of from a preset number of companies; (2) solicit information from the tobacco companies on a predetermined schedule; (3) increase from 60 days to 90 days the amount of time provided to the companies to submit the requested data; (4) announce in advance any changes in the kinds of data to be collected or in the ways that specific data should be reported; (5) allow advertising and promotional expenditure data to be reported to the nearest $1,000, rather than to the dollar; and (6) allow expenses to be reported based on generally accepted accounting principles.

Philip Morris suggests that the FTC use sales volume or market share benchmarks to identify those companies to whom it will send information requests. The FTC does, in fact, consider changes in industry market share in determining whether requests should be issued to new companies that have not previously received them, but does not believe it must adopt any one specific mechanism for determining to whom it will issue information requests. Insofar as the FTC is asking for clearance from OMB under the PRA to send information requests to up to 15 companies, it will retain the flexibility to adapt to major changes in either industry.

Philip Morris suggests several reasonable ways to decrease the burden on the cigarette and smokeless tobacco companies. Accordingly, after the first set of 6(b) orders, which will be issued after the FTC obtains OMB clearance to do so, the FTC will attempt to issue its 6(b) orders in the second calendar quarter of the year; unforeseen events may, however, change this schedule in any particular year. The FTC will also extend the time period for companies to submit their responses from 60 days to 90 days, and permit advertising and promotional expenditure data to be reported to the nearest $1,000. Furthermore, the FTC intends that expenses be reported based on generally accepted accounting principles, and Philip Morris's suggestion provides an opportunity to clear up any confusion on this issue.

Philip Morris states that it would like advance notice of any changes to the information requirements in the 6(b) orders. The FTC provided advance notice of certain relatively significant changes to the cigarette and smokeless tobacco 6(b) orders in 2002, so that the companies would have additional time to prepare for these changes. The FTC will consider whether any additional burden on the companies from relatively minor changes in the reporting requirements will be outweighed by the costs of the significant delay in obtaining the data that would result from providing advance notice.

Estimated hours burden: The FTC staff's estimate of the hours burden is based on the time required to respond to each information request. Although the FTC intends to issue the information requests only to the five largest cigarette companies and the five largest smokeless tobacco companies (for a total of ten information requests), the burden estimate is based on up to 15 information requests being issued per year to take into account any future changes in these industries. Because these companies vary greatly in size, in the number of products that they sell, and in the extent and variety of their advertising and promotion, the staff has provided a range of the estimated hours burden. Based upon its knowledge of the industries, the staff estimates that the time required to gather, organize, format, and produce their responses ranges between 30 and 80 hours per information request for all but the very largest companies. The very largest companies could require hundreds of hours per year. Thus, the staff estimates a total of 1,800 hours per year, with an average burden per company for each of the intended ten recipients of 180 hours. The staff estimates that for possible additional recipients, which would be smaller companies, the burden should not exceed 300 hours (60 hours per company $\times$ 5 companies). Thus the staff's estimate of the total burden is 2,100 hours. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.[4]

Estimated cost burden: It is not possible to calculate with precision the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The staff assumes that professional personnel will handle most of the tasks involved in gathering and producing responsive information, and have applied an average hourly wage of $150/hour for their labor. The staff's best estimate for the total labor costs for up to 15 information requests is $315,000.

The staff estimates that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

William Blumenthal,

General Counsel.

[FR Doc. 05–21592 Filed 10–28–05; 8:45 am]

BILLING CODE 6750–01–P

[4] The staff's burden estimate takes into account that the first request to the five smokeless tobacco companies may cover data for three calendar years.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public.

DATES: The meeting will be held on November 29, 2005, from 9 a.m. to 5 p.m., and on November 30, 2005, from 9 a.m. to 3:30 p.m.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 705–A; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Emma English, Program Analyst, National Vaccine Program Office, Department of Health and Human Services, Room 443–H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 690–5566, *nvac@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 2101 of the Public Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse

reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Assistant Secretary for Health, as the Director of the National Vaccine Program, on matters related to the program's responsibilities.

Topics to be discussed at the meeting include the 2005–2006 influenza season, pandemic influenza preparedness, and the financing of vaccines. New liaison representatives and ex-officio members will be welcomed to the Committee and updates will be given by various subcommittees and working groups. A tentative agenda will be made available on or about November 14, 2005 for review on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac.*

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the Humphrey Building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to NVAC members should submit materials to the Executive Secretary, NVAC, through the contact person listed above prior to close of business November 24, 2005. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *nvac@osophs.dhhs.gov* or call 202–690–5566.

Dated: October 26, 2005.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. 05–21611 Filed 10–28–05; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–05DA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Surveillance of HIV/AIDS Related Events Among Persons Not Receiving Care—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting approval from the Office of Management and Budget (OMB) to interview 1,000 randomly selected HIV-infected persons in the United States who are not receiving care to determine: (1) Their reasons for not being in care; (2) information about any barriers to receiving care; and (3) treatment, and their clinical status (i.e., CD4 and HIV viral load levels). There are approximately 1 million HIV-infected persons in the United States. Of these, an estimated 75 percent know they are infected, but approximately half of those who know they are infected do not have evidence of having received any medical care for their HIV infection.

For this proposed data collection, areas participating in CDC's Morbidity Monitoring Project (MMP) will identify HIV-infected people using their state's HIV/AIDS surveillance and supplemental laboratory databases. Once HIV-infected people who are not in care are identified, an interview will be conducted. The information to be collected includes demographic data, HIV testing history, high-risk drug use and sexual behaviors, and reasons for not using health care and treatment.

Results from this study will be used in conjunction with data from the Morbidity Monitoring Project to determine the extent of medical services and resources needed for persons who are infected with HIV, but who have not received medical care and treatment. Additionally, new data related to those not receiving care will be used to design effective interventions for linking persons to care.

Participation in the data collection is voluntary and there is no cost to respondents to participate in the survey other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
HIV Positive Persons	1,000	1	1	1,000

Dated: October 21, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–21601 Filed 10–28–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Compassion Capital Fund Evaluation—Initial Outcome Study.

OMB No.: New Collection.

Description: This proposed information collection activity is for an initial outcome study that is one component of the evaluation of the Compassion Capital Fund (CCF) program. The information collection will be through mailed surveys to be completed by selected faith-based and community organizations that received sub-awards from CCF grantees. The CCF grantees are intermediary organizations that provide capacity building services to faith-based and community organizations.

The CCF evaluation is an important opportunity to examine the outcomes and effectiveness of the Compassion Capital Fund in meeting its objective of improving the capacity of faith-based and community organizations. This initial outcome study component of the evaluation will involve approximately 180 faith-based and community organizations. Information will be sought from these organizations to assess change and improvement in various areas of capacity resulting from receipt of sub-awards.

Respondents: The respondents will be selected faith-based and community organizations that received sub-awards in 2003 from nine selected CCF intermediary grantees. The surveys will be self-administered.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Faith-based and Community Org. Survey	180	1	.33 hours (20 minutes).	60
Estimated total annual burden hours	180			60

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov*.

Dated: October 24, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–21596 Filed 10–28–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22703]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss Task Statement #53, ''Medical Certification Standards and Disqualifying Medical Conditions for Merchant Mariners.'' MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. This meeting will be open to the public.

DATES: The MERPAC working group will meet on Wednesday, November 16, 2005 from 8:30 a.m. to 4:30 p.m. (local), and Thursday, November 17, 2005, from 8:30 a.m. to 4:30 p.m. (local). These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before November 2, 2005. Written material and requests to have a copy of your material distributed to each member of the working group should reach the Coast Guard on or before November 2, 2005.

ADDRESSES: The working group of MERPAC will meet at the National Maritime Center, 4200 Wilson Blvd., Arlington, VA 22203. The meeting on November 16th will take place in Room 900 and the meeting on November 17th will take place in Rooms 630 and 790. Further information on the location of the National Maritime Center may be obtained from Ms. Dee Holland at (202) 493–1002. Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under Docket Number USCG–2005–22703.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. (Pub. L. 92–463, 86 Stat. 770, as amended).

Persons interested in this meeting who are unable to attend may be able to participate by teleconference. For information on teleconferencing, contact

Mr. Gould at the numbers or e-mail listed in **FOR FURTHER INFORMATION CONTACT** after November 6, 2005.

Agenda of November 16–17, 2005 Meetings: The working group will meet to discuss Task Statement #53, ''Medical Certification Standards and Disqualifying Medical Conditions for Merchant Mariners.'' The Coast Guard intends to issue a new Navigation and Vessel Inspection Circular (NVIC) to clarify procedures and reduce the confusion among its Regional Examination Centers and applicants regarding the physical competence of mariners. The working group will review the draft NVIC and prepare comments for the full MERPAC committee to consider at its next meeting.

Procedural

This meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Gould no later than November 2, 2005. Written material for distribution at the meeting should reach the Coast Guard no later than November 2, 2005. If you would like a copy of your material distributed to each member of the committee or working group in advance of the meeting, please submit 25 copies to Mr. Gould no later than November 2, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Gould at the numbers listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: October 24, 2005.

Lorne W. Thomas.

Captain, U.S. Coast Guard, Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–21575 Filed 10–28–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Comment Request

ACTION: Request OMB emergency approval; sworn statement of refugee applying for admission to the United States.

The Department of Homeland Security (Department) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The DHS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Accordingly, DHS is requesting emergency review from OMB for this information collection. OMB approval has been requested by October 31, 2005. If granted, the emergency approval is only valid for 180 days.

This information collection was previously published by U.S. Customs and Border Protection (CBP) in the **Federal Register** on July 19, 2005 at 70 FR 41416, allowing for a 60-day public comment period ending September 19, 2005. No comments were received on this information collection. This information collection will be administratively transferred to U.S. Citizenship and Immigration Services.

This notice allows for an additional 30 days for public comment. Comments are encouraged and will be accepted until November 30, 2005. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone 202–272–8377. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) 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;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–646. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form provides the grounds for admissibility to the United States as they apply to refugees. The information collected allows the USCIS to make admissibility determinations for refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 20 minutes (.0333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,975 annual burden hours.

Dated: October 27, 2005.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–21715 Filed 10–28–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4978–N–08]

Notice of Proposed Information Collection for Public Comment; Customer Service and Satisfaction Survey, Resident Assessment Subsystem (RASS)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 30, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Sherry Fobear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Customer Service and Satisfaction Survey.

OMB Control Number: 2507–0001.

Description of the need for the information and proposed use: The Customer Service and Satisfaction Survey is the instrument that HUD uses to survey residents residing in assisted housing. The survey assesses residents' satisfaction with housing services and living conditions. HUD conducts a Customer Service and Satisfaction Survey of assisted housing residents annually. A random sample of residents is taken within each public housing agency and surveyed on an annual basis in accordance with Public Housing Assessment System (PHAS) requirements and regulation. PHAs are required to announce the survey and follow-up on substandard scores.

Agency form number, if applicable: Not applicable.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 482,928 residents receive the survey, 3171 PHAs submit implementation and follow-up plans, HUD receives a total of 166,759 responses from residents and PHAs (total based on 41.38 percent response rate for survey); annual submission per resident respondents and PHAs; average hours for resident response is 15 minutes; average hours for PHA response is 5.45 hours; the total reporting burden is 51,466 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 25, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E5–5989 Filed 10–28–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4966–N–03]

The Performance Review Board; Notice of Appointment

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointment of Keith A. Nelson as Vice Chairperson of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–3000.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410–3000, telephone (202) 708–1381. (This is not a toll-free number.)

Dated: October 20, 2005.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E5–5988 Filed 10–28–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0010; Mourning Dove Call Count Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent a request to OMB to renew approval for our information collection associated with the mourning dove call count survey. The current OMB control number for this information collection is 1018–0010, which expires October 31, 2005. We have requested that OMB renew approval of this information collection for a 3-year term.

DATES: You must submit comments on or before November 30, 2005.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related form, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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.

On May 12, 2005, we published in the **Federal Register** (70 FR 25108) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending July 11, 2005. We did not receive any comments regarding this notice.

The Migratory Bird Treaty Act (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a–754j–2) designate the Department of the Interior as the key agency responsible for (1) wise management of migratory bird populations frequenting the United States and (2) setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The Mourning Dove Call Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between the Service and State wildlife agencies, as well as local and tribal biologists. Each spring, State, Service, local, and tribal biologists conduct the survey to provide the necessary data to determine the population status of the mourning dove. The Service and the States use the survey results to (1) develop annual regulations for hunting mourning doves, (2) plan and evaluate dove management programs, and (3) provide specific information necessary for dove research. If this survey were not conducted, we would not be able to determine the population status of mourning doves prior to setting regulations.

Title of Collection: Mourning Dove Call Count Survey.

OMB Control Number: 1018–0010.

Service Form Number: 3–159.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, and Federal employees.

Total Annual Responses: 1,062

Total Annual Burden Hours: 2,796.6 hours. We believe 80 percent of the respondents will enter data electronically, with an average reporting burden of 2.67 hours per respondent. For all other respondents, we estimate the reporting burden to be 2.5 hours per respondent.

We invite your comments concerning this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of our migratory bird management functions, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimate of burden, (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 those who are to respond. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552a).

Dated: October 5, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–21631 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0019; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent a request to OMB to renew approval for our information collection associated with the North American woodcock singing ground survey. The current OMB control number for this information collection is 1018–0019, which expires October 31, 2005. We have requested that OMB renew approval of this information collection for a 3-year term.

DATES: You must submit comments on or before November 30, 2005.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related form, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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.

On May 12, 2005, we published in the **Federal Register** (70 FR 25107) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending July 11, 2005. We received one comment regarding this notice. The commenter expressed opposition to hunting, but did not address the collection requirements. We have not made any changes to the information collection as a result of this comment.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) wise management of migratory bird populations frequenting the United States and (2) setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. State, Federal, Provincial, local, and tribal conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that are not sufficiently restrictive, which could cause harm to the woodcock population, or too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting. The Service, State conservation agencies, university associates, and other interested parties use the data for various research and management projects.

Title of Collection: North American Woodcock Singing Ground Survey.

OMB Control Number: 1018–0019.

Form Number: FWS Form 3–156.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Responses: 750.

Total Annual Burden Hours: 571 hours. We believe 70 percent of the respondents (525 persons) will enter data electronically, with an average reporting burden of 0.8 hours per respondent. For all other respondents, we estimate the reporting burden to be 0.67 hours per respondent.

We invite your comments concerning this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of our migratory bird management functions, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimate of burden, (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 those who are to respond. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552a).

Dated: October 4, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–21632 Filed 10–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 30, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

PRT–107356

Applicant: Animal Genetics d.b.a. Avian Biotech, Tallahassee, FL.

The applicant requests a permit to import samples from all birds (avian species, taxonomic class *Aves*), live and dead, in order to conduct diagnostic testing for disease, genetic analysis, or sex determination for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–079368

Applicant: Iowa State University, Ames, Iowa.

The applicant requests a permit to import samples and non-viable eggs obtained from wild yellow-headed side-necked turtle (*Podocnemis unifilis*) for the purpose of scientific research. The applicant is seeking to import additional samples obtained from viable eggs. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–111449

Applicant: Jerry K. Davis, Casper, WY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–064209, 107740, 107741, and 107742

Applicant: Hollywood Animals, Inc., Los Angeles, CA.

The applicant requests permits to export, re-export, re-import four captive-born tigers (*Pantera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: PRT–064209, Katrina/Katie; PRT–107740, Kipling; PRT–107741, Kismet; PRT–107742, Shickha. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Dated: October 14, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–21634 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 30, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

PRT–107396

Applicant: Texas Tech University, Dept. of Biological Sciences, Lubbock, TX.

The applicant requests a permit to import blood samples taken from wild

chuckwallas (*Sauromalus varius*) on San Esteban Island, Mexico, for the purpose of scientific research/enhancement of the survival of the species.

PRT–107930

Applicant: Texas Tech University, Dept. of Biological Sciences, Lubbock, TX.

PRT–107930

The applicant requests a permit to import blood samples collected from live wild animals of the following species: Chinese alligator (*Alligator sinensis*), spectacled caiman (*Caiman crocodilus*), broad-snouted caiman (*Caiman latirostris*), black caiman (*Melanosuchus niger*), American crocodyle (*Crocodulus acutus*), slender-snouted crocodile (*C. cataphractus*), Orinoco crocodile (*C. intermedius*), Philippine crocodile (*C. mindorensis*), Morelet's crocodile (*C. moreletii*), mugger (*C. palustris*), estuarine crocodile (*C. porosus*), Cuban crocodile (*C. rhombifer*), Siamese crocodile (*C. siamensis*), African dwarf crocodile (*Osteolaemus tetraspis*), false gharial (*Tomistoma schlegelii*), and Indian gharial (*Gavialis gangeticus*) from areas around the world for the purpose of scientific research/enhancement of the survival of the species.

PRT–111397

Applicant: Donald S. Priest, San Francisco, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: October 7, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–21636 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plan and Environmental Impact Statement for Roanoke River National Wildlife Refuge in Bertie County, NC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that the Final Comprehensive Conservation Plan and Environmental Impact Statement for Roanoke River National Wildlife Refuge are available for distribution. The plan and environmental impact statement were prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describe how the refuge will be managed over the next 15 years. The compatibility determinations for hunting, fishing, environmental education and interpretation, trapping of selected furbearers for management, forest management, and resource research studies are also available within the plan.

DATES: A Record of Decision may be signed on or after November 30, 2005.

ADDRESSES: A copy of the plan and environmental impact statement is available by writing to Harvey Hill, Refuge Manager, 114 West Water Street, Windsor, North Carolina 27983; Telephone: 252/794–3808; Fax: 252/794–3780; or by e-mail at *harvey_hill@fws.gov.* The plan and environmental impact statement may also be accessed and downloaded from the Service's Web site *http://southeast.fws.gov/planning.*

SUPPLEMENTARY INFORMATION: Roanoke River National Wildlife Refuge, in northeastern North Carolina, consists of 20,978 acres, of which 13,824 acres are bald cypress-water tupelo swamp and 7,154 acres are bottomland hardwood forest. The refuge supports a variety of wildlife species, including neotropical migratory songbirds, waterfowl, colonial nesting birds, deer, turkeys, and squirrels.

The refuge hosts 20,000 visitors annually who participate in hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Implementing the comprehensive conservation plan will enable the refuge to fulfill its critical role in the conservation and management of fish and wildlife resources in the Roanoke River Valley, and to provide quality environmental education and wildlife-dependent recreational opportunities for refuge visitors. The Service analyzed three alternatives for managing the refuge and selected Alternative 3 to guide management direction over the next 15 years.

Alternative 3 advances the refuge program considerably and outlines programs that will meet both the biological needs of refuge resources and needs of the public. The refuge will develop a habitat management plan and manage all habitats and selected easements large enough to warrant consideration. The staff will survey all wildlife on the refuge. The number of public use opportunities will increase. Pending the availability of funds, a shop and equipment storage facility will be constructed.

Two changes were made to the final plan. One change related to the Service's role in addressing the managed-flow issue on the Roanoke River. The river has managed flows from both flood control dams and hydroelectric power generation. The Service has been involved in negotiations regarding the re-licensing agreement between Dominion Power Company and the Federal Energy Regulatory Commission. The Service is involved in discussions to study the impacts of the flood control projects under section 216 of the Flood Control Act. The Service's Ecological Services Field Office in Raleigh, North Carolina, is the lead office on the managed-flow issue. The South Atlantic Fisheries Coordination Office also participates in the negotiations and studies. The other change related to the waterfowl hunting season on the refuge. The refuge will now end its waterfowl hunting season on the same date the state waterfowl hunting season ends.

Public comments were requested, considered, and incorporated throughout the planning process. Public outreach has included open houses, public meetings, a biological review, planning update mailings, and **Federal Register** notices. Five previous notices were published in the **Federal Register** concerning the comprehensive conservation plan and environmental impact statement (65 FR 66256, November 3, 2000; 66 FR 23042, May 7, 2001; 67 FR 13793, March 26, 2002; 70 FR 16299, March 30, 2005; 70 FR 32610, June 3, 2005). During the comment period on the draft plan, the Service received fifteen public responses. All substantive issues raised have been addressed either through changes incorporated into the final plan or through the responses to the public comments, which are included in Appendix XIII of the plan.

Dated: September 8, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–21607 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.,*) the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
104988	James L. Craig	70 FR 38190; July 1, 2005	September 21, 2005.
103811	Richard R. Jordahl	70 FR 41782; July 20, 2005	October 3, 2005.
106137	Dwight W. Gochenaur	70 FR 46184; August 9, 2005	October 3, 2005.

Dated: October 14, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–21635 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on December 6, 2005, in Phoenix, Arizona, at the Arizona State Office located at One North Central Avenue, 8th floor. It will begin at 9:30 a.m. and conclude at 4:30 p.m. The agenda items to be covered include: Review of the August 23, 2005 Meeting Minutes; BLM State Director's Update on Statewide Issues; New RAC Member Orientation; Presentations on San Pedro Water Rights Issues; Rangeland Inventory and Monitoring; Arizona Land Use Planning Update; RAC Questions on Written Reports from BLM Field Managers; Field Office Rangeland Resource Team Proposals; Reports by the Standards and Guidelines, Recreation, Off-Highway Vehicle Use, Public Relations, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on December 6, 2005, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, One North Central Avenue, Phoenix, Arizona 85004, (602) 417–9215.

Carl Rountree,

Acting Arizona State Director.

[FR Doc. 05–21602 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–079–06–1010–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, 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), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The next regular meeting of the Western Montana RAC will be held November 30, 2005 at the Butte Field Office, 106 N. Parkmont, Butte, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m. This meeting replaces the meeting originally scheduled for October 13, 2005, but was cancelled.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

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 western Montana. At the November 30 meeting, topics we plan to discuss include: the Butte Resource Management Plan travel management and a presentation on Montana economics and how it relates to public land management. We will also have a briefing on the recent White House Conservation Conference.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated 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, or other reasonable accommodations, should contact the BLM as provided below.

Dated: October 25, 2005.

John W. Thompson,

Acting Field Manager.

[FR Doc. 05–21605 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Colorado River Management Plan, Final Environmental Impact Statement, Grand Canyon National Park, Grand Canyon, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Colorado River Management Plan, Grand Canyon National Park.

SUMMARY: Pursuant to subsection 102(2)(C) of the National Environmental Policy Act of 1969, codified as amended at 42 U.S.C. subsection 4332 (2)(C), the National Park Service announces the availability of a Final Environmental Impact Statement (FEIS) for the Colorado River Management Plan, Grand Canyon National Park, Grand Canyon, Arizona. The FEIS describes and analyzes the environmental impacts of several alternatives, including a modified preferred alternative, for future management of public use of the Colorado River through Grand Canyon National Park, including the Lower Gorge. The analysis includes both commercial and non-commercial uses. The FEIS incorporates changes based on comments on the Draft EIS, and includes the responses to public comments.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Copies of the Final Environmental Impact Statement are available online at *www.nps.gov/grca/crmp* or from the office of the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023. The document is also available on the Internet at: *http://planning.nps.gov/plans.cfm*.

FOR FURTHER INFORMATION CONTACT: Mary Killeen, Special Assistant, Grand Canyon National Park, 928–638–7885.

Dated: September 28, 2005.

Michael D. Snyder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 05–21595 Filed 10–28–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0038

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR PART 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

DATES: Comments on the proposed information collection must be received by December 30, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@smre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources—30 CFR part 783.

OMB Control Number: 1029–0038.

Summary: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: Once, at time of application submission.

Description of Respondents: Underground coal mining applicants and State regulatory authorities.

Total Annual Responses: 64.

Total Annual Burden Hours: 28,856 hours.

Dated: October 24, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–21577 Filed 10–28–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–328, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 21, 2005. Comments on the adequacy of responses may be filed with the Commission by January 17, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On the dates listed below, countervailing duty and antidumping duty orders on the subject imports were issued:

Order date	Product/Country	Inv. No.	FR cite
6/13/79	Carbon steel plate/Taiwan	AA1921–197	44 FR 33877
8/17/93	Cut-to-length carbon steel plate/Belgium	701–TA–319	58 FR 43749
8/17/93	Cut-to-length carbon steel plate/Brazil	701–TA–320	58 FR 43751
8/17/93	Cut-to-length carbon steel plate/Mexico	701–TA–325	58 FR 43755
8/17/93	Cut-to-length carbon steel plate/Spain	701–TA–326	58 FR 43761
8/17/93	Cut-to-length carbon steel plate/Sweden	701–TA–327	58 FR 43758
8/17/93	Cut-to-length carbon steel plate/United Kingdom	701–TA–328	58 FR 43748
8/19/93	Cut-to-length carbon steel plate/Belgium	731–TA–573	58 FR 44164
8/19/93	Cut-to-length carbon steel plate/Brazil	731–TA–574	58 FR 44164
8/19/93	Cut-to-length carbon steel plate/Finland	731–TA–576	58 FR 44165
8/19/93	Cut-to-length carbon steel plate/Germany	731–TA–578	58 FR 44170
8/19/93	Cut-to-length carbon steel plate/Mexico	731–TA–582	58 FR 44165
8/19/93	Cut-to-length carbon steel plate/Poland	731–TA–583	58 FR 44166
8/19/93	Cut-to-length carbon steel plate/Romania	731–TA–584	58 FR 44167
8/19/93	Cut-to-length carbon steel plate/Spain	731–TA–585	58 FR 44167
8/19/93	Cut-to-length carbon steel plate/Sweden	731–TA–586	58 FR 44168
8/19/93	Cut-to-length carbon steel plate/United Kingdom	731–TA–587	58 FR 44168
8/17/93	Corrosion-resistant carbon steel flat products/France	701–TA–348	58 FR 43759
8/17/93	Corrosion-resistant carbon steel flat products/Korea	701–TA–350	58 FR 43752
8/19/93	Corrosion-resistant carbon steel flat products/Australia	731–TA–612	58 FR 44161
8/19/93	Corrosion-resistant carbon steel flat products/Canada	731–TA–614	58 FR 44162
8/19/93	Corrosion-resistant carbon steel flat products/France	731–TA–615	58 FR 44169
8/19/93	Corrosion-resistant carbon steel flat products/Germany	731–TA–616	58 FR 44170
8/19/93	Corrosion-resistant carbon steel flat products/Japan	731–TA–617	58 FR 44163
8/19/93	Corrosion-resistant carbon steel flat products/Korea	731–TA–618	58 FR 44159

Following five-year reviews by Commerce and the Commission, effective December 15, 2000, Commerce issued a continuation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom (65 FR 78469). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original 1979 antidumping determination concerning carbon steel plate from Taiwan, the Commission found one Domestic Like Product consisting of carbon steel plate. Consistent with its

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–141, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

1993 determinations, the Commission found in its full five-year review determinations issued in 2000 a Domestic Like Product consisting of cut-to-length plate and another Domestic Like Product consisting of corrosion-resistant steel (excluding clad plate). Microalloy products were not included in either of these Domestic Like Products in the original and full five-year review determinations. For purposes of this notice, you should report information separately on the following two Domestic Like Products: (1) Cut-to-length plate and (2) corrosion-resistant steel (excluding clad plate).

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original 1979 antidumping determination concerning carbon steel plate from Taiwan, the Commission found one regional Domestic Industry, consisting of producers of carbon steel plate located in the west coast States of California, Washington, and Oregon. Certain Commissioners defined the Domestic Industry differently. In its full five-year review determinations, the Commission utilized a national industry analysis with respect to Taiwan, as with all the countries subject to the 1993 orders. The Commission did not address the issue of processors in the 1993 investigations concerning cut-to-length plate; however, in its full five-year review determinations concerning cut-to-length plate, the Commission found the Domestic Industry to consist of the domestic producers of the Domestic Like Product, including processors. The Commission defined the Domestic Industry with respect to corrosion-resistant steel as the domestic producers of the Domestic Like Product of all corrosion-resistant steel (excluding clad plate). For purposes of this notice, you should report information separately on the following two Domestic Industries: (1) All domestic producers of cut-to-length plate, including processors and (2) all domestic producers of corrosion-resistant steel (excluding clad plate).

(5) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews 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 the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 17, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its review determinations, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Products, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the Domestic Industries in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industries.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Products. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1999.

(7) If you are a U.S. producer of the Domestic Like Products, provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of each Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Products produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Products and Domestic Industries; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–21589 Filed 10–28–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–552]

In the Matter of Certain Ink Markers and Packaging Thereof; Issuance of a General Exclusion Order and a Cease and Desist Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order and a cease and desist order in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 205–3112. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission based on a complaint filed by Sanford, L.P. of Freeport, Illinois (''Sanford'' or ''complainant''). 69 FR 52029 (August 24, 2004). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337'') in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523 and also by reason of infringement of trade dress. The notice of investigation identified 12 respondents. On November 10, 2004, the presiding administrative law judge (''ALJ'') granted a motion to add three respondents to the investigation. The Commission determined not to review this initial determination (''ID''). 69 FR 75342 (December 16, 2004). Each respondent was accused of violating Section 337 by infringing Sanford's trade dress. Certain respondents were also accused of infringing one or more of complainant's registered trademarks.

Between November 15, 2004, and June 1, 2005, the ALJ issued several IDs terminating various respondents on the basis of settlement agreements or consent orders. During that time period other IDs were issued finding several other respondents in default. No petitions for review of any of these IDs were filed, and the Commission determined not to review any of them, thereby allowing them to become the Commission's determinations.

On April 19, 2005, Sanford filed a motion seeking a summary determination of violation and issuance of a general exclusion order and a cease and desist order. On July 25, 2005, the ALJ issued Order No. 30, an ID finding violations of Section 337 and recommending the issuance of a general exclusion order and a cease and desist order to respondent Mon Ami Co. Ltd. (''Mon Ami''). He further recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

On August 5, 2005, Sanford filed a petition for review of one aspect of Order No. 30. Specifically, Sanford sought review of the ID's finding that complainant had failed to show importation with respect to defaulted respondent LiShui Laike Pen Co., Ltd. The Commission investigative attorney (''IA'') opposed Sanford's petition for review. On August 25, 2005, complainant filed a motion for leave to file a reply to the IA's petition for review.

The Commission determined, on September 8, 2005, not to review the July 25, 2005 ID (Order No. 30) finding a violation of Section 337, and established a schedule for filing submission on the issues of remedy, the public interest and bonding. 70 FR 54079 (Sept. 13, 2005). The Commission also denied complainant's motion for leave to file a reply. Id. Sanford and the IA filed timely written submissions regarding the issues of remedy, the public interest, and bonding. Sanford filed a reply submission.

Having reviewed the record in this investigation, including the parties' written submissions and responses thereto, the Commission determined that the appropriate form of relief in this investigation is general exclusion order and a cease and desist order to one respondent, Mon Ami. The general exclusion order prohibits the entry for consumption of contain ink markers and packaging thereof that bear SHARPIE Trademarks or Sanford's protected trade dress, as well as any marks or trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship. The cease and desist order prohibits respondent Mon Ami from importing, selling, marketing, advertising, distributing, offering for sale, transferring (Except by exportation), and soliciting U.S. agents or distributors for imported ink markers and packaging thereof that bear Sanford's protected trade dress, are confusingly similar thereto, or that are otherwise misleading as to source, origin or sponsorship.

The Commission determined that the statutory public interest factors enumerated in subsections (d)(1) and (f)(1) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(d)(1) and (f)(1)) do not preclude the issuance of these remedial orders. The Commission also determined that the excluded ink markers may be imported and sold in the United States during the Presidential review period under bond in the amount of 100 percent of the entered value of such items. The Commission's order and opinion in support thereof were delivered to the President and the United States Trade Representative on the day of their issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.50 of the Commission's Interim Rules of Practice.

By order of the Commission.

Issued: October 25, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–21591 Filed 10–30–05; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442–443 and 731–TA–1095–1097 (Preliminary)]

Certain Lined Paper School Supplies From China, India, and Indonesia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India and Indonesia of certain lined paper school supplies that are alleged to be subsidized by the Governments of India and Indonesia, and by reason of imports from China, India, and Indonesia of certain lined paper school supplies that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On September 9, 2005, a petition was filed with the Commission and Commerce by MeadWestvaco Corp. of Dayton, OH; Norcom, Inc., of Norcross, GA; and Top Flight, Inc., of Chattanooga, TN (collectively, the Association of American School Paper Suppliers), alleging that an industry in the United States is materially injured, and threatened with further material injury, by reason of subsidized imports of certain lined paper school supplies from India and Indonesia, and by reason of LTFV imports of certain lined paper school supplies from China, India, and Indonesia. Accordingly, effective September 9, 2005, the Commission instituted countervailing and antidumping duty investigation Nos. 701–TA–442–443 and 731–TA–1095–1097 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 19, 2005 (70 FR 54961). The conference was held in Washington, DC, on September 30, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 24, 2005. The views of the Commission are contained in USITC Publication 3811 (October 2005), entitled *Certain Lined Paper School Supplies from China, India, and Indonesia: Investigation Nos. 701–TA–442–443 and 731–TA–1095–1097* (Preliminary).

Issued: October 24, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–21590 Filed 10–28–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–037]

Sunshine Act Meeting Notice; Notice of Revised Agenda Item

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 2, 2005 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

REVISED AGENDA ITEM:

4. Inv. Nos. 751–TA–28–29 (Certain Frozen Warmwater Shrimp and Prawns from India and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before November 21, 2005.)

Issued: October 26, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–21711 Filed 10–27–05; 11:42 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–038]

Sunshine Act Meeting Agency Holding the Meeting: United States International Trade Commission

TIME AND DATE: November 8, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–388–391 and 731–TA–816–821 (Review) (Cut-to-Length Carbon Steel Plate from France, India, Indonesia, Italy, Japan, and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before November 21, 2005.)
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 27, 2005.

By order of the Commission

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–21712 Filed 10–27–05; 11:42 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Extension of Currently Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Methamphetamine Project Status Update Report (SUR).

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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.

The purpose of this notice is to allow for 60 days for public comment until December 30, 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 Rebekah Dorr, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

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 agency's 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:* Methamphetamine Project Status Update Report (SUR).

(3) *Agency form number if any and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law Enforcement Agencies or Government entities that are recipients of COPS Methamphetamine grants. Other: Universities and Private Non-Profit Agencies. Abstract: The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 annual responses from grantees. The estimated amount of time required for the average respondent to respond is: 3.0 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 hours annually.

If additional information is required contact: Brenda 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: October 25, 2005.

Brenda Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 05–21633 Filed 10–28–05; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cal Dive International, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Cal Dive International, Inc. et al.,* Civil Action No. 1:05CV02041. On October 18, 2005, the United States filed a Complaint alleging that the proposed acquisition by Cal Dive International, Inc. of certain saturation diving assets of Stolt Offshore, Inc. and S&H Diving, LLC would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition in the market for saturation diving services in the United States Gulf of Mexico. The proposed Final Judgment requires Cal Dive to divest two vessels and a separate saturation diving system.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, Room 215, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comments is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (telephone: 202–307–6349).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 500, Washington, DC 20530; Plaintiff, v. *Cal Dive International, Inc.*, 400 N. Sam Houston Parkway E, Suite 400, Houston, Texas 77060, *Stolt Offshore, S.A.*, Dolphin House, Windmill Road, Sunbury-on-Thames, Middlesex, TW 16 THT, England, *Stolt Offshore, Inc.*, 10787 Clay Road, Houston, Texas 77041, and *S&H Diving, LLC*, 10787 Clay Road, Houston, Texas 77041, Defendants

Case Number 1:05CV02041.
Judge: Emmet G. Sullivan.

Deck Type: Antitrust.
Date Stamp: 10/18/2005.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin permanently the proposed acquisition by Cal Dive International, Inc. (''Cal Dive'') of certain assets of Stolt Offshore, Inc. and S&H Diving, LLC (hereinafter collectively ''Stolt''), and complains and alleges as follows:

1. On or about April 11, 2005, Cal Dive entered into an agreement to purchase certain assets from Stolt, including a number of diving support vessels, saturation diving systems, and other assets used by Stolt to compete in the provision of saturation diving services in the United States Gulf of Mexico.

2. Cal Dive and Stolt are two of only three major providers of saturation diving services to offshore pipeline construction companies and to owners and operators of pipelines, platforms and other offshore structures located in the United States Gulf of Mexico. As two of the largest providers of these services, Cal Dive and Stolt regularly compete directly for saturation diving projects.

3. Cal Dive's acquisition of Stolt's saturation diving assets would eliminate Stolt as a competitor for the provision of saturation diving services in the United States Gulf of Mexico. As a result, purchasers of these services likely will face higher prices and reduced service. The proposed transaction would substantially reduce competition among providers of saturation diving services in the United States Gulf of Mexico, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

I. Jurisdiction and Venue

4. This complaint is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

5. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Cal Dive and Stolt provide saturation diving services, pipelay services, and other support services to customers located in multiple states in and around the United States Gulf of Mexico. The defendants' sales of saturation diving services in the United States represent a regular, continuous and substantial flow of interstate commerce, and have had a substantial effect upon interstate commerce.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1331, 1337 and Section 15 of the Clayton Act, 15 U.S.C. 25.

7. The defendants have consented to personal jurisdiction and venue in this judicial district.

II. The Defendants and the Transaction

8. Cal Dive International, Inc. is a corporation organized and existing under the laws of the state of Minnesota. Its corporate headquarters are located in Houston, Texas, and its primary subsea and marine services operations are located in Morgan City, Louisiana. Cal Dive provides a full range of marine contracting services in both shallow and deep water. Cal Dive employs more than 300 full-time supervisors, divers, tenders and support staff, making it the largest provider of diving services in the United States Gulf of Mexico. Cal Dive's total revenues in 2004 exceeded $540 million, including more than $45 million for saturation diving services in the United States Gulf of Mexico.

9. Stolt Offshore, Inc., with headquarters in Houston, Texas, is a corporation organized and existing under the laws of the state of Louisiana. S&H Diving, LLC, is a Louisiana limited liability company, with offices in Houston, Texas. Stolt Offshore S.A., the ultimate parent of both Stolt Offshore, Inc. and S&H Diving, LLC, is a major international marine contractor registered in Luxembourg, with 2004 revenues in excess of $1.2 billion worldwide. In the United States Gulf of Mexico, Stolt offers construction and installation engineering services for conventional pipelines, subsea tiebacks, heavy lift salvage, and subsea inspection, maintenance and repair services. Stolt is one of the largest providers of saturation diving services in the United States Gulf of Mexico. In 2004, Stolt had revenues in excess of $30 million from saturation diving services in the United States Gulf of Mexico.

10. On or about April 11, 2005, Cal Dive and Stolt entered into an Asset Purchase Agreement, pursuant to which Cal Dive agreed to purchase, and Stolt agreed to sell, certain assets for a purchase price of $125 million dollars. Pursuant to the Asset Purchase Agreement, Cal Dive would acquire, among other assets, all of the saturation diving systems, vessels and related equipment currently used by Stolt to provide saturation diving services in the United States Gulf of Mexico.

III. Trade and Commerce

A. Background

11. Much of the world's oil and gas reserves are located in offshore areas, including in the United States Gulf of Mexico. Marine contractors design, engineer, fabricate, and install offshore drilling and production rigs, platforms and other structures, which are used to extract crude oil and natural gas from commercially significant subsea reservoirs. Marine contractors, using pipelay vessels, also install undersea pipelines that transport crude oil, natural gas, and other natural resources from production sites to other sites offshore and onshore.

12. Human divers perform a wide variety of services for marine contractors as well as the owners and operators of offshore pipelines, platforms and other structures. Divers are used in subsea construction projects, for inspection, maintenance and repair services, and for recovery and salvage after structures are damaged by weather or accident. Divers can perform these services either by surface diving or saturation diving.

13. Surface divers can perform diving services only in relatively shallow depths. Following each dive, surface divers must undertake time-consuming decompression procedures to allow their bodies to adjust to the lower pressure that exists at the surface.

14. Saturation diving systems permit divers to work for prolonged periods and at much greater depths, without undergoing decompression after each dive. During saturation diving operations, divers live for as long as several weeks in airtight chambers aboard diving vessels. The pressure in those chambers is maintained at a level that is equivalent to the pressure at the subsea work site. Saturation diving systems are typically rated to depths of between 600 and 1,000 feet of sea water. A saturation diving system typically consists of one or more saturation chambers, one or more diving bells, and related safety, monitoring and life support systems and equipment. Saturation diving systems can be permanently installed on a vessel, or they can be portable, which allows them to be transported from one vessel to another.

15. A vessel must maintain a fixed position while a saturation dive is in progress. This can be accomplished either by anchor-and-chain mooring systems or through dynamic positioning. Some saturation diving projects require dynamically-positioned vessels because of harsh weather,

environmental concerns, water depth, or pipeline congestion on the sea floor.

B. Relevant Product Market

16. The relevant product market affected by this transaction is ''saturation diving services,'' the provision of human diving services utilizing saturation diving systems, diving support vessels and other assets. Providers and customers of saturation diving services analyze the specific characteristics of a saturation diving project to determine which resources, such as dynamically positioned vessels or saturation chambers of a particular size, are required or are most economical for completing the project. Saturation diving service providers often bid against one another for projects, and are relatively more constrained in the prices they can charge for a particular project by competitors who have comparably more suitable resources available for completing that project.

17. For projects that utilize divers at substantial depths or for extended periods, surface diving is not a safe or cost-effective substitute for saturation diving services. Other underwater technologies, such as remotely operated vehicles or atmospheric diving suits, have significant practical, technical and cost limitations. It is thus unlikely that a sufficient number of customers would switch away from saturation diving services to make a small but significant nontransitory increase in the price of those services unprofitable.

18. Saturation diving services is a relevant antitrust product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

C. Relevant Geographic Market

19. Cal Dive and Stolt compete with each other for the provision of saturation diving services in the United States Gulf of Mexico. In the event of an increase in the price of saturation diving services in the United States Gulf of Mexico, it is unlikely that a sufficient number of other providers of saturation diving services operating outside of the United States Gulf of Mexico would bid their services in this market such that a price increase would be unprofitable.

20. The United States Gulf of Mexico is a relevant geographic antitrust market and a section of the country within the meaning of Section 7 of the Clayton Act.

IV. Anticompetitive Effects

A. Market Concentration

21. The relevant market is highly concentrated and would become significantly more concentrated as a result of the proposed transaction. An appropriate measure of concentration in the market for saturation diving services is capacity, calculated on the basis of the number of saturation diving systems used by each competitor in the relevant geographic market. Prior to the transaction, Cal Dive accounts for more than 30%, and Stolt for approximately 20%, of all saturation diving systems competing in the United States Gulf of Mexico.

22. The transaction would increase substantially the concentration in the market for saturation diving services in the United States Gulf of Mexico. The number of significant competitors in that market would be reduced from three to two. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, the proposed transaction would increase the HHI by more than 1100, resulting in a post-merger HHI of approximately 3000.

B. Loss of Competition

23. The proposed transaction is likely to substantially reduce competition in the market for saturation diving services in the United States Gulf of Mexico. The transaction would combine the saturation diving assets of two of the largest providers of saturation diving services in the United States Gulf of Mexico, giving Cal Dive more than half of the capacity in the market.

24. Customers for saturation diving services in the United States Gulf of Mexico have benefitted from competition between Cal Dive and Stolt. Cal Dive and Stolt each possess similar types of saturation diving systems and vessels that provide the two companies the ability to effectively bid against each other for a wide variety of saturation diving jobs, including those that call for either dynamically positioned vessels or vessels with anchor-and-chain mooring systems. Many customers consider Cal Dive and Stolt to be the most attractive competitors in the market for saturation diving services in the United States Gulf of Mexico because of their size, vessels, experience, and reputation for safety. The two companies often directly compete against one another for particular projects, bidding similar combinations of resources. This direct and close competition has resulted in lower prices and higher quality in saturation diving services than would otherwise have existed.

25. If Cal Dive's proposed acquisition of Stolt's saturation diving assets is consummated, the competition between Cal Dive and Stolt will be eliminated, and the market for saturation diving services in the United States Gulf of Mexico will become substantially more concentrated. This loss of competition increases the likelihood of unilateral action by Cal Dive to increase prices and diminish the quality or quantity of services or of coordinated action by the remaining players in the market to achieve the same ends.

C. Entry and Expansion

26. Entry by a new saturation diving services provider or expansion by an existing fringe competitor would be difficult, time consuming and expensive. It would require obtaining saturation diving systems, suitable vessels and related equipment and the divers and other personnel necessary to provide saturation diving services. It also would require establishing the operational experience and reputation for safety demanded by customers in the market. Redeployment of saturation diving assets from outside the United States Gulf of Mexico is unlikely to constrain a price increase in the relevant market. Therefore, new entry or expansion would not be timely, likely or sufficient to thwart the competitive harm of the acquisition.

V. Violations Alleged

27. The effect of Cal Dive's proposed acquisition of the saturation diving support assets of Stolt, if it were consummated, may be substantially to lessen competition in the provision of saturation diving services in interstate trade and commerce in the United States Gulf of Mexico, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Unless restrained, the transaction will likely have the following effects, among other:

a. Actual and potential competition between Cal Dive and Stolt in the provision of saturation diving services would be eliminated;

b. Competition generally in the provision of saturation diving services would be eliminated or substantially lessened;

c. Prices of saturation diving services would increase; and

d. Quality and service levels in the provision of saturation diving services would decrease.

Request for Relief

The United States requests that:

1. the proposed transaction be adjudged to violate Section 7 of the Clayton Act;

2. the defendants be permanently enjoined from carrying out the Asset Purchase Agreement dated April 11, 2005, or from entering into or carrying out any agreement, understanding, or

plan, the effect of which would be to allow Cal Dive to merge with or acquire any of the saturation diving equipment, saturation diving vessels, or other saturation diving assets of Stolt;

3. the United States be awarded costs of this action;

4. the United States have such other relief as the Court may deem just and proper.

Dated: October 18, 2005.

Respectfully submitted,

For Plaintiff United States

Thomas O. Barnett,

Acting Assistant Attorney General.

J. Bruce McDonald,

Deputy Assistant Attorney General.

Dorothy B. Fountain,

Deputy Director of Operations.

Donna N. Kooperstein,

Chief, Transportation, Energy, and Agriculture Section.

William H. Stallings,

Assistant Chief, Transportation, Energy, and Agriculture Section.

Jennifer L. Cihon (OH Bar #0068404),
Angela L. Hughes (DC Bar #303420),
John M. Snyder (DC Bar #456921),
Bethany K. Hipp (GA Bar #141678),

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 325 7th St., NW., Suite 500, Washington, DC 20530, Telephone: 202/307–3278.

Appendix A—Definition of ''HHI''

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

Certificate of Service

I hereby certify that on October 18, 2005, I caused a copy of the foregoing Complaint, proposed Final Judgment, Hold Separate Stipulation and Order and Plaintiff United States' Explanation of Consent Decree Procedures to be served on counsel for defendants in this matter in the manner set forth below:

By electronic mail and hand delivery:

Counsel for Defendant Cal Dive International, Inc., Daniel L. Wellington (DC Bar #273839), Neely B. Agin (DC Bar #456005), Fulbright & Jaworski LLP, 801 Pennsylvania Avenue, NW., Washington, DC 20004–2623, Tel: (202) 662–4574, Fax: (202) 662–4643.

Counsel for Defendants Stolt Offshore S.A., Stolt Offshore, Inc., and S&H Diving LLC, Paul C. Cuomo (DC Bar #457793), Sean F. Boland (DC Bar &249318), Howrey LLP, 1299 Pennsylvania Avenue, NW., Washington, DC 20004–2402, Tel: (202) 783–0800, Fax: (202) 383–6610.

Jennifer L. Cihon (OH Bar #0068404),

Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, (202) 307–3278, (202) 616–2441 (Fax).

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Cal Dive International, Inc., Stolt Offshore S.A., Stolt Offshore, Inc., and S&H Diving, LLC,* Defendants

Case No. Judge Deck Type: Antitrust Filed:

Proposed Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on October 18, 2005, plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, the defendants have stipulated solely for purposes of this action that the Court has personal jurisdiction over the defendants;

And whereas, the defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of a saturation diving system and diving support vessels by defendant Cal Dive to assure that competition is not substantially lessened;

And Whereas, the United States requires defendant Cal Dive to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, the defendants have represented to the United States that the divestiture required below can and will be made and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trail or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendant Cal Dive divests the Saturation Diving Assets.

B. ''Cal Dive'' means Cal Dive International, Inc., a corporation organized and existing under the laws of the state of Minnesota with its headquarters in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Person'' means any natural person, corporation, association, firm, partnership, or other business or legal entity.

D. ''Saturation Diving Assets'' means the vessel designated as the Seaway Defender, the vessel designated as the Midnight Carrier, and the saturation diving system designated as the Torch Saturation Diving System.

E. ''Stolt'' means Stolt Offshore S.A., a Luxembourg registered company, its United States subsidiary, Stolt Offshore, Inc., a corporation organized and existing under the laws of the state of Louisiana, with headquarters in Houston, Texas, and S&H Diving LLC, a Louisiana limited liability company with offices in Houston, Texas.

F. ''Torch Saturation Diving System'' means the portable saturation diving system that Cal Dive purchased from Torch Offshore, Inc. that has six major components: a four-man single lock saturation chamber, a transfer lock (TUP), a two-man diving bell, a main umbilical, a control van, and a supply van.

III. Applicability

This Final Judgment applies to the defendants, Cal Dive and Stolt, and all

other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Divestiture

A. Defendant Cal Dive is hereby ordered and directed (1) to divest the Torch Saturation Diving System and the vessel designated as the Midnight Carrier within sixty (60) calendar days after the date of filing of the Complaint in this matter, or within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later; and (2) to divest the vessel designated as the Seaway Defender within ninety (90) calendar days after the date of the filing of the Complaint in this matter, or within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The divestitures must be made in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to extend each time period up to thirty (30) calendar days, and shall notify the Court in such circumstances. Defendant Cal Dive agrees to use its best efforts to divest the Saturation Diving Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendant Cal Dive promptly shall make known, by usual and customary means, the availability of the Saturation Diving Assets. Defendant Cal Dive shall inform any person making inquiry regarding a possible purchase of the Saturation Diving Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. The defendants shall offer to furnish to each prospective Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Saturation Diving Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. The defendants shall make available such information and documents to the United States at the same time that such information and documents are made available to any other person.

C. The defendants shall provide to each Acquirer of some or all of the Saturation Diving Assets, and to the United States, the name and current contact information (if known) for each individual who is currently, or who, to the best of the defendants' knowledge, has been involved at any time since June 1, 2004, whether onshore or offshore, in the operation of the specific Saturation Diving Assets to be acquired by the Acquirer or in the provision of diving services by or with any of the specific Saturation Diving Assets to be acquired by the Acquirer, including divers, diving tenders, and diving supervisors or superintendents. The defendants shall not impede or interfere with any negotiations by the Acquirer or Acquirers to employ any person who has worked with, or whose principal responsibilities have concerned, any of the Saturation Diving Assets.

D. Consistent with customary due diligence processes and subject to customary confidentiality assurances, the defendants shall permit each prospective Acquirer of some or all Saturation Diving Assets to have reasonable access to personnel and to make inspection of the Saturation Diving Assets; access to any and all environmental and other permit documents and information; and access to any and all financial, operational, or other documents and information.

E. Defendant Cal Dive also agrees to divest the Saturation Diving Assets in a condition and state of repair equal to their condition and state of repair as of the date Cal Dive acquires them, ordinary wear and tear excepted.

F. The defendants will not undertake, directly or indirectly, any challenges to any permits or certification relating to the operation of the Saturation Diving Assets, or otherwise take any action to impede the divestiture or operation of the Saturation Diving Assets.

G. The divestiture of the Saturation Diving Assets shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Saturation Diving Assets will be operational or made operational by the Acquirer or Acquirers, will be used by the Acquirer or Acquirers as part of a viable, ongoing business engaged in the provision of saturation diving services in the United States Gulf of Mexico, and will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, has the intent and capability (including the necessary operational, technical, and financial capability) to compete effectively in the saturation diving business in the United States Gulf of Mexico; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer or Acquirers and defendant Cal Dive gives the defendants the ability unreasonably to raise the Acquirer's or Acquirers' costs, to lower the Acquirer's or Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirer or Acquirers to compete effectively.

V. Appointment of Trustee

A. If defendant Cal Dive has not divested the Saturation Diving Assets within the time period specified in Section IV(A), defendant Cal Dive shall notify the United States of that fact in writing. Upon application of the United States, in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Saturation Diving Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Saturation Diving Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer or Acquirers acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of the Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendant Cal Dive any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonable necessary in the trustee's judgment to assist in the divestiture.

C. The defendants shall not object to a sale of the Saturation Diving Assets by the trustee on any ground other than the trustee's malfeasance. Any such objections by the defendants must be conveyed in writing to the United States and the trustee within 10 (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendant Cal Dive, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Saturation Diving Assets and for all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the defendant Cal Dive and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Saturation Diving Assets and based on a fee arrangement providing the trustee

with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. The defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the Saturation Diving Assets and the personnel, books, and records of the Saturation Diving Assets, and defendant Cal Dive shall develop financial and other information relevant to the Saturation Diving Assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. The defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, the Saturation Diving Assets and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Saturation Diving Assets.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contains information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include, without limitation, extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendant Cal Dive or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendant Cal Dive. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire the Saturation Diving Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from the defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers and any other potential Acquirer or Acquirers. The defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendant Cal Dive and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or Acquirers or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by the defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

The defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, the defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. The defendants shall take no action that would jeopardize, delay, or impede the divestiture order by this Order.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, the defendants shall deliver to the United States an affidavit that describes the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any or all of the Saturation Diving Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendant Cal Dive has taken to solicit buyers for the Saturation Diving Assets, and to provide required information to any prospective Acquirer or Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by the defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, the defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions the defendants have taken and all steps the defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in the defendants' earlier affidavits filed pursuant to this section

within fifteen (15) calendar days after the change is implemented.

C. Defendant Cal Dive shall keep all records of all efforts made to preserve and to divest the Saturation Diving Assets until one year such divestiture has been completed.

X. Compliance Inspections

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants, be permitted:

1. Access during the defendants' office hours to inspect and copy, or at the United States, option to require the defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of the defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the defendants shall submit written reports, or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the United States, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give the defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a, for three years after entry of this Final Judgment, defendant Cal Dive, without providing advance notification to the Department of Justice, shall not directly or indirectly acquire any saturation chamber that, to the best of Cal Dive's knowledge, has been operated in or located in the United States Gulf of Mexico at any time since October 1, 2002, whether as part of a portable saturation diving system or as part of saturation diving system built into a vessel, or any interest, including any financial, security, loan, equity or management interest in, any company that owns or operates such a saturation chamber. Such notification shall be provided to the Department of Justice in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) calendar days prior to the acquisition, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction.

XII. No Reacquisition

Defendant Cal Dive may not reacquire any of the Saturation Diving Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest, and the parties have complied with the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Dated:

_____

United States District Judge

Certificate of Service

I hereby certify that on October 18, 2005, I caused a copy of the foregoing Complaint, proposed Final Judgment, Hold Separate Stipulation and Order and Plaintiff United States' Explanation of Consent Decree Procedures to be served on counsel for defendants in this matter in the manner set forth below:

By electronic mail and hand delivery:

Counsel for Defendant Cal Dive International, Inc., Daniel L. Wellington (D.C. Bar #273839), Neely B. Agin (D.C. Bar #456005), Fullbright & Jaworski LLP, 801 Pennsylvania Avenue, NW., Washington, DC 20004–2623, Tel: (202) 662–4574, Fax: (202) 662–4643.

Counsel for Defendants Stolt Offshore S.A., Stolt Offshore, Inc. and S&H Diving LLC, Paul C. Cuomo (D.C. Bar #457793), Sean F. Boland (D.C. Bar #249318), Howrey LLP, 1299 Pennsylvania Avenue, NW., Washington, DC 20004–2402, Tel: (202) 783–0800, Fax: (202) 383–6610.

Jennifer L. Cihon (OH Bar #0068404)

Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, (202) 307–3278, (202) 616–2441 (Fax).

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Cal Dive International, Inc., Stolt Offshore S.A., Stolt Offshore, Inc., and S&H Diving, LLC,* Defendants

Civil Case No.: 1:05CV02041
Judge: Emmet G. Sullivan
Deck Type: Antitrust
Date Stamp: October 20, 2005

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Cal Dive International, Inc. (''Cal Dive'') and defendants Stolt Offshore, Inc. and S&H Diving, LLC (collectively ''Stolt'') entered into an Asset Purchase Agreement dated April 11, 2005, pursuant to which Cal Dive will acquire certain assets from Stolt, including a number of diving support vessels, saturation diving systems, and other assets used by Stolt to provide saturation diving services in the United States Gulf of Mexico. The United States filed a civil antitrust Complaint on October 18, 2005, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to reduce competition substantially for saturation diving services in the United States Gulf of Mexico in violation of section 7 of the Clayton Act, 15 U.S.C. 18. As a result, purchasers of these services likely would face higher prices and reduced service.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Cal Dive is required to divest the vessel designated as the Seaway Defender, the vessel designated as the Midnight Carrier, and the saturation diving system designated as the Torch Saturation Diving System (collectively, the ''Saturation Diving Assets''). Under the terms of the Hold Separate Stipulation and Order and proposed Final Judgment, Cal Dive will take certain steps to ensure that, prior to such divestiture, the Saturation Diving Assets will remain independent of the rest of Cal Dive's assets and will be maintained in the same condition and state of repair as of the date Cal Dive acquired them, and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Cal Dive is a corporation organized and existing under the laws of the state of Minnesota. Its corporate headquarters are located in Houston, Texas, and its primary subsea and marine services operations are based in Morgan City, Louisiana. Cal Dive provides a full range of marine contracting services, which includes marine construction, robotic services, manned diving, and decommissioning services, in both shallow and deep water. Cal Dive employs more than 300 full-time supervisors, divers, tenders and support staff, making it the largest provider of diving services in the United States Gulf of Mexico. Cal Dive's total revenues in 2004 exceeded $540 million, including more than $45 million for saturation diving services in the United States Gulf of Mexico.

Stolt Offshore, Inc., with headquarters in Houston, Texas, is a corporation organized and existing under the laws of the state of Louisiana. S&H Diving, LLC, is a Louisiana limited liability company, with offices in Houston, Texas. Stolt Offshore S.A., the ultimate parent of both Stolt Offshore, Inc. and S&H Diving, LLC, is a major international marine contractor registered in Luxembourg, with 2004 revenues in excess $1.2 billion worldwide. In the United States Gulf of Mexico, Stolt offers construction and installation engineering services for conventional pipelines; subsea tiebacks; heavy lift salvage; and subsea inspection, maintenance and repair services. Stolt is one of the largest providers of saturation diving services in the United States Gulf of Mexico. In 2004, Stolt had revenues in excess of $30 million from saturation diving services in the United States Gulf of Mexico.

Pursuant to the April 11, 2005 Asset Purchase Agreement, Cal Dive will acquire, among other assets, all of the saturation diving systems, diving support vessels and related equipment currently used by Stolt to provide saturation diving services in the United States Gulf of Mexico. The total purchase price is approximately $125 million.

The proposed transaction, as initially agreed to by Defendants, would reduce competition substantially for saturation diving services in the United States Gulf of Mexico. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on October 18, 2005.

B. The Saturation Diving Services Industry

Much of the worlds's oil and gas reserves are located in offshore areas, including in the United States Gulf of Mexico. Marine contractors design, engineer, fabricate, and install offshore drilling and production rigs, platforms, and other structures, which are used to extract crude oil and natural gas from commercially significant subsea reservoirs. Marine contractors, using pipelay vessels, also install undersea pipelines that transport crude oil, natural gas and other natural resources from the production sites offshore and onshore.

Human divers perform a wide variety of services for marine contractors and owners and operators of offshore pipelines, platforms and other structures. Divers are used for subsea construction projects, for subsea inspection, maintenance and repair services, and for recovery and salvage after structures are damaged by weather or accident. Divers can perform these services either by surface diving or saturation diving.

Surface divers can perform diving services only in relatively shallow depths, generally not deeper than 150 feet of sea water. Surface divers must go through a time-consuming decompression process following each diver to allow their bodies to adjust to the lower pressure that exists at the surface.

Saturation divers can work for prolonged periods and at much greater depths, without undergoing decompression after each dive. During saturation diving operations, divers live for as long as several weeks in airtight chambers aboard diving vessels. The pressure in those chambers is maintained at a level that is equivalent to the pressure at the subsea work site. The divers travel from the saturation chamber to the subsea work site in similarly pressurized closed capsules called bells that allow the divers to remain at constant pressure during their descent to the sea floor.

Saturation diving systems are typically rated to allow divers to work at depths between 600 and 1,000 feet of sea water. A saturation diving system typically consists of one or more saturation chambers, one or more diving bells, and related safety, monitoring and life support systems and equipment. Saturation diving systems can be permanently installed on a vessel, or they can be portable, in which case they can be transported from one vessel to another.

A vessel must maintain a fixed position during a saturation dive. This can be accomplished either by anchor-and-chain mooring systems, which require surveyors to determine the appropriate anchor placement, or through dynamic positioning systems, which position vessels using satellite technology. Generally, vessels positioned by anchor and chain mooring systems operate in shallower waters. Vessels with dynamic positioning systems are more often used in deeper water, in areas with many pipelines on the sea floor and in hazardous weather conditions. Some saturation diving projects require a dynamically positioned vessel. Other projects can be executed using either mode of positioning.

C. The Competitive Effects of the Transaction on Saturation Diving Services in the United States Gulf of Mexico

Cal Dive's proposed acquisition of the Saturation Diving Assets will substantially reduce competition for saturation diving services in the United States Gulf of Mexico. Saturation diving services are the provision of human diving services utilizing saturation diving systems. Providers and customers of saturation diving services analyze the specific characteristics of a saturation diving project to determine which resources, such as dynamically positioned vessels or saturation chambers of a particular size, are required or are most economical for completing the project. Saturation diving service providers often bid against one another for projects, and are relatively more constrained in the prices they can charge for a particular project by competitors who have comparably more suitable resources available for completing that project.

Surface diving is not a safe or cost-effective substitute for saturation diving services for projects that utilize divers at substantial depths or for extended periods. Other underwater technologies, such as remotely operated vehicles or atmospheric diving suites, have significant practical, technical and cost limitation that prevent them from being viable alternatives to saturation diving.

Cal Dive and Stolt compete with one another for the provision of saturation diving services in the United States Gulf of Mexico. In the event of an increase in the price of saturation diving services in the United States Gulf of Mexico, it is unlikely that a sufficient number of other providers of saturation diving services operating outside the United States Gulf of Mexico would bid their services inside the United States Gulf such that a price increase would be unprofitable. Therefore the relevant geographic market where the transaction will substantially reduce competition for saturation diving services is the United States Gulf of Mexico.

Cal Dive and Stolt are the two of the largest providers of saturation diving services in the United States Gulf of Mexico. Their combined market share in that market, measured on the basis of the number of saturation diving systems used in the United States Gulf of Mexico, is approximately 50 percent.

Customers of saturation diving services in the United States Gulf of Mexico have benefitted from competition between Cal Dive and Stolt. Cal Dive and Stolt each possess similar types of saturation diving systems and vessels that provide the two companies the ability to effectively bid against one another for a wide variety of saturation diving jobs, including those that call for dynamically positioned vessels and those that call for vessels equipped with anchor-and-chain mooring systems. Many customers consider Cal Dive and Stolt to be the two most attractive competitors for saturation diving services in the United States Gulf of Mexico because of their size, vessels, experience, and reputation for safety. The two companies often directly compete against one another for particular projects, bidding similar combinations of resources. This direct and close competition has resulted in lower prices and higher quality in saturation diving service than would otherwise have existed.

The transaction would increase substantially concentration in the market for saturation diving services in the United States Gulf of Mexico. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defeated and explained in the Appendix A to the Complaint, the proposed transaction would increase the HHI relating to the number of saturation diving systems by more than 1100, resulting in a post merger HHI of approximately 3000.

By eliminating competition between Cal Dive and Stolt, the transaction would reduce the number of significant competitors in the market for saturation diving services in the United States Gulf of Mexico from three to two. This loss of competition increases the likelihood of unilateral action by Cal Dive to increase prices and diminish the quality or quantity of services, or of coordinated action by the remaining players in the market to achieve the same ends.

Entry by a new saturation diving services provider or expansion by an existing fringe competitor would be difficult, time consuming and expensive. It would require obtaining saturation diving systems, suitable vessels and related equipment, as well as the divers and other personnel necessary to provide saturation diving services. It also would require establishing the operational experience and reputation for safety demanded by customers in the market. Redeployment of saturation diving assets from outside the United States Gulf of Mexico is unlikely to constrain a price increase in the relevant market. Therefore, new entry or expansion would not timely, likely, or sufficient thwart the competitive harm of the proposed acquisition.

For these reasons, the United States concluded that Cal Dive's proposed acquisition of the Saturation Diving Assets will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of saturation diving services in the United States Gulf of Mexico.

III. Explanation of the Proposed Final Judgment

A. Divestiture

The divestiture requirements of the proposed Final Judgment will maintain competition for saturation diving services in the United States Gulf of Mexico by allowing independent competitors to acquire the Saturation Diving Assets. The proposed Final Judgment requires Cal Dive to divest the portable saturation diving system designated the Torch Saturation Diving System and the vessel designated as the Midnight Carrier, an anchor-and-chain mooring vessel capable of accommodating a portable saturation diving system, within sixty (60) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, and to divest the vessel designated as the Seaway Defender, a dynamically positioned vessel with a built-in saturation diving system, within ninety (90) days after the Complaint in this matter, or within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States may extend each time period available to Cal Dive to complete the divestiture up to an additional thirty (30) days.

The Saturation Diving Assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the Saturation Diving Assets will be operational or made operational by the acquirer or acquirers and will be used

by the acquirer or acquirers as part of a viable, ongoing business engaged in the provision of saturation diving services in the United States Gulf of Mexico. Cal Dive must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers. The Defendants must also provide acquirers information relating to personnel that are or have been involved, at any time since June 1, 2004, in the operation of, or provision of diving services by, the Saturation Diving Assets, including divers, diving tenders, and diving supervisors or superintendents. The Defendants further must refrain from interfering with any negotiations by the acquirer or acquirers to employ any of the personnel that are or have been involved in the operation of, or provision of diving services by, any of the Saturation Diving Assets.

The proposed Final Judgment also requires Cal Dive, for a period of three years after the entry of the Final Judgment, to provide advance notice to the Department of Justice before acquiring any saturation chamber that has been operated in or located in the United States Gulf of Mexico at any time since October 1, 2002, whether as a part of a portable saturation diving system or as part of a saturation diving system built into a vessel, or any interest in any company that owns or operates such a saturation chamber. Further, the proposed Final Judgment restricts Cal Dive from reacquiring any of the Saturation Diving Assets during the term of the proposed Final Judgment.

B. Use of a Divestiture Trustee

In the event that Cal Dive does not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Cal Dive will pay all the costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the proposed acquisition. The divestitures of the Saturation Diving Assets will preserve competition in the market for saturation diving services by maintaining an independent and economically viable competitor in the United States Gulf of Mexico.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as cost and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any persons may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Cal Dive's acquisition of certain Stolt assets. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the market for saturation diving services in the United States Guld of Mexico.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(c)(1). In making that determination, the Court shall consider;

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(c)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v.

Microsoft Corp., 56 F.3d 144B, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to itnervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973)(statement of Senator Tunney).[1] Rather.

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responss to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectivness of antitrust enforcement by consent decree.

[1] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)(recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interests.' '' *United States* v. *AT&T Corp.* 552 F. Supp 131, (D.D.C. 1982) (citation omitted) (quoting Gillette, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F.Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even through the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 20, 2005.

Respectfully submitted,

Jennifer L. Cihon (OH Bar #0068404)
Angela L. Hughes (DC Bar #303420)
John M. Snyder (DC Bar #456921)
Bethany K. Hipp (GA Bar #141678).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

Certificate of Service

I hereby certify that on October 20, 2005, I caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendants in this matter in the manner set forth below:

By electronic mail and hand delivery:

Counsel for Defendant Cal Dive International, Inc., Daniel L. Wellington (D.C. Bar #273839), Neely B. Agin (D.C. Bar #456005), Fulbright & Jaworski LLP, 801 Pennsylvania Avenue, NW., Washington, DC 20004–2623, Tel: (202) 662–4574, Fax: (202) 662–4643.

Counsel for Defendants Stolt Offshore S.A., Stolt Offshore, Inc. and S&H Diving LLC, Paul C. Cuomo (D.C. Bar #457793), Sean F. Boland (D.C. Bar #249318), Howrey LLP, 1299 Pennsylvania Avenue, NW., Washington, DC 20004–2402, Tel: (202) 783–0800, Fax: (202) 383–6610.

Jennifer L. Cihon (OH Bar #0068404,

Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, (202) 307–3278, (202) 616–2441 (Fax).

[FR Doc. 05–21510 Filed 10–28–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 25, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• 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 agency's 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.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Reporting and Performance Standards System for Migrant and Seasonal Farmworker Programs Under Title I, Section 167 of the Workforce Investment Act (WIA).

OMB Number: 1205–0425.

Frequency: Quarterly; Annually.

Affected Public: State, Local or Tribal government; Not-for-profit institutions.

Type of Response: Recordkeeping; Reporting.

Number of Respondents: 53.

Annual Responses: 29,871.

Average Response time: 60.25 hours—combined annual time for filling out Form 9095 quarterly and Forms 9093 and 9094 annually.

Total Annual Burden Hours: 70,562.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: This collection of information relates to the operation of employment and training programs for Migrant and Seasonal Farmworkers under title I, section 167 of the Workforce Investment Act (WIA). It also contains the basis of the new performance standards system for WIA section 167 grantees, which is used for program oversight, evaluation and performance assessment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–21598 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request Disclosures by Insurers to General Account Policyholders

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Department of Labor (the Department) conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

By this notice, the Department is soliciting comments concerning the information collection provisions of the regulation pertaining to section 401(c) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The statute and the regulatory provisions codified at 29 CFR 2550.401c-1 require insurers that issue certain types of insurance policies to employee benefit plans to make specific one-time and annual disclosures to such plans if assets of the plan are held in the insurer's general account. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before December 30, 2005.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) amended ERISA by adding Section 401(c), which clarified the extent to which assets of an insurer's general account constitute assets of an employee benefit plan when that insurer has issued policies for the benefit of the plan and such policies are supported by assets of the general account. Section 401(c) established certain requirements and disclosures for insurance companies that offer and maintain policies for employee benefit plans where the plans' assets are held in the insurer's general account. Section 401(c) also required the Secretary to provide guidance on the statutory requirements; such guidance was issued as a final rulemaking on January 5, 2000 (65 CFR 614). The regulation includes information collection provisions pertaining to one-time and annual disclosure obligations of insurers. The information collection provisions in the final rulemaking were submitted for review by the Office of Management and Budget (OMB) in an information collection request (ICR) in connection with promulgation of the final rulemaking and were approved by OMB under OMB Control No. 1210–0114. The ICR approval is scheduled to expire on January 31, 2006.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

• Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the collections 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.

III. Current Action

The Employee Benefits Security Administration (EBSA) is requesting an extension of the currently approved ICR for the Disclosures by Insurers to General Account Policyholders. EBSA is not proposing or implementing changes to the regulation or to the existing ICR. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

AGENCY: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures by Insurers to General Account Policyholders.

OMB Number: 1210–0114.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 104.

Frequency of Response: One-time; Annual.

Responses: 123,500.

Estimated Total Burden Hours: 466,667.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: October 25, 2005.

Susan G. Lahne,

Senior Pension Law Specialist, Office of Policy and Research, , Employee Benefits Security Administration.

[FR Doc. 05–21597 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,711]

Baxter; Deerfield, Illinois; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2005 in response to a petition filed by company official on behalf of workers of Baxter, Deerfield, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of September 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6009 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,939]

CMOR Manufacturing, Inc., Rocklin, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 12, 2005 in response to a worker petition which was filed by the California ESS on behalf of workers at CMOR Manufacturing, Rocklin, California.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility.

Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 26th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6007 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,980]

Collins Supply & Equipment Co. Inc., Scranton, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 15, 2005 in response to a petition filed by a company official on behalf of workers at Collins Supply & Equipment Co. Inc., Scranton, Pennsylvania.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition.

Signed at Washington, DC, this 26th day of September, 2005.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6005 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 10, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 10, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 9/26/05 and 10/7/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58022	Meadow River Hardwood Lumber Company (CECIC)	Rainelle, WV	09/26/05	09/06/05
58023	Fairchild Semiconductor (State)	West Jordan, UT	09/26/05	09/23/05
58024	Black Hawk Products Group (Wkrs)	Hayesville, NC	09/26/05	09/23/05
58025	Kealey Johnson Wholesale Florist (Comp)	Abingdon, VA	09/26/05	09/21/05
58026	Permiere Fibers (Comp)	Asheboro, NC	09/26/05	09/23/05
58027	Carhartt, Inc. (Comp)	Providence, KY	09/26/05	09/08/05
58028	Cat Logistics (Wkrs)	Portland, TN	09/26/05	09/26/05
58029	IBM (Wkrs)	Maumee, OH	09/26/05	09/26/05
58030	Holt Hoisery Mills (State)	Burlington, NC	09/26/05	09/09/05
58031	Com-Tal Machine and Engineering (State)	White Bear Township, MN.	09/26/05	09/26/05
58032	Ken-Tron Mfg., Inc. (Wkrs)	Owensboro, KY	09/26/05	09/12/05
58033	Semiconductor Industries, LLC (Comp)	East Greenwich, RI	09/27/05	09/26/05
58034	Highland Mills, Inc. (Comp)	Charlotte, NC	09/27/05	09/26/05
58035	Eastman Kodak Company (Comp)	Rochester, NY	09/28/05	09/26/05
58036	Liberty Carton New England (State)	Peabody, MA	09/28/05	09/21/05
58037	Cabot Supermetals (Wkrs)	Boyertown, PA	09/28/05	08/30/05
58038	Teradyne, Inc. (State)	Waltham, MA	09/28/05	09/27/05
58039	Liberty Fibers Corporation (Comp)	Lowland, TN	09/28/05	09/27/05
58040	Cope Tool and Die, Inc. (State)	Garfield Township, MI	09/28/05	09/19/05
58041	Foam Pro (State)	Irvine, CA	09/28/05	09/28/05
58042	A.D.H. Manufacturing Corp. (Comp)	Etowah, TN	09/28/05	09/26/05
58043	Intermark Fabric Corp. (State)	Plainfield, CT	09/28/05	09/28/05
58044	Midwest Air Technologies (Wkrs)	Mountain Grove, MO	09/29/05	09/27/05
58045	Mamco Corporation/Lexel (State)	Hutsonville, IL	09/29/05	09/28/05
58046	Leybold Vacuum USA (Wkrs)	Export, PA	09/29/05	09/27/05
58047	Plasti-Coil, Inc. (WKrs)	Lake Geneva, WI	09/29/05	09/19/05
58048	S. Goldberg and Co., Inc. (Comp)	Hackensack, NJ	09/29/05	09/28/05
58049	Steams Manufacturing (State)	Sauk Rapids, MN	09/29/05	09/29/05
58050	Masterbuilt Manufacturing, Inc. (Comp)	Columbus, GA	09/30/05	09/08/05
58051	Miker Companies (GCIU)	Cheektowaga, NY	09/30/05	09/22/05
58052	Trigen-BioPower, Inc. (Comp)	Hodges, SC	09/30/05	09/26/05
58053	Lea/American Drew (Comp)	N. Wilkesboro, NC	09/30/05	09/22/05
58054	Arca Knitting, Inc. (Comp)	Hialeah, FL	09/30/05	09/29/05
58055	New Venture Industries (Comp)	Grand Blanc, MI	10/03/05	09/29/05
58056	Neilsen Manufacturing, Inc. (State)	Salem, OR	10/03/05	09/30/05
58057	Emerson Motor Technologies (State)	Kennett, MO	10/03/05	09/30/05
58058	Wizard Textiles, Inc. (UNITE)	Newark, NJ	10/03/05	10/03/05
58059	Pomeroy Computer Resources (Wkrs)	Macon, GA	10/03/05	10/03/05
58060	Madison Brands, Inc. (Comp)	Brooklyn, NY	10/03/05	09/16/05
58061	Atfab (Wkrs)	Painesville, OH	10/03/05	09/14/05
58062	Integreo (Wkrs)	Macon, GA	10/03/05	09/19/05
58063	Sony Electronics, Inc. (Comp)	San Diego, CA	10/03/05	10/03/05
58064	VF Jeanswear Limited Partnership (Comp)	Wilson, NC	10/04/05	10/01/05
58065	Kelloggs (Wkrs)	Macon, GA	10/04/05	09/26/05
58066	Agere Systems (IBEW)	Allentown, PA	10/04/05	09/26/05
58067	Yoder Brothers (State)	Chualar, CA	10/04/05	09/25/05
58068	Photocircuits Corporation (Comp)	Peachtree City, GA	10/04/05	09/09/05
58069	All Best, Inc. (Wkrs)	New York, NY	10/04/05	09/07/05
58070	Carrier Access Corp. (State)	Boulder, CO	10/05/05	10/04/05
58071	EEEA (Wkrs)	Mauldin, SC	10/05/05	09/15/05
58072	Engineered Specialty Plastics (State)	Hot Springs, AR	10/05/05	10/04/05
58073	Schindler Elevator Corporation (Wkrs)	Glendale, NY	10/05/05	10/05/05
58074	Jasco Fabrics, Inc. (State)	New York City, NY	10/05/05	09/14/05
58075	Paxar (Wkrs)	Sayre, PA	10/05/05	10/04/05
58076	T P Corporation (Comp)	Duryea, PA	10/05/05	10/05/05
58077	Friedrich Air Conditions (IUE)	San Antonio, TX	10/05/05	10/05/05
58078	Kolpak-KMT Refrigeration (Comp)	River Falls, WI	10/06/05	09/22/05
58079	Industrial Wire Products, Inc. (Wkrs)	Sullivan, MO	10/06/05	10/04/05
58080	Stratex Networks (State)	San Jose, CA	10/06/05	09/22/05
58081	Accufab Industries (Comp)	New Freedom, PA	10/06/05	09/30/05
58082	True Temper Sports (State)	El Cajon, CA	10/06/05	09/28/05
58083	Epsilon Foam Corporation (Wkrs)	Azusa, CA	10/06/05	10/05/05
58084	Draeger Medical, Inc. (Wkrs)	Telford, PA	10/06/05	10/06/05
58085	EMC (State)	Cincinnati, OH	10/06/05	09/23/05
58086	Nitro Corporation and Total Distribution, Inc. (Wkrs)	Nitro, WV	10/07/05	10/04/05
58087	Bucilla Corp. (Wkrs)	Hazleton, PA	10/07/05	10/06/05
58088	Twin Rivers Technologies, Inc. (USWA)	Painesville, OH	10/07/05	10/06/05
58089	Somika (Comp)	Shelby, NC	10/07/05	10/06/05
58090	Texas Instruments, Inc. (Comp)	Attleboro, MA	10/07/05	10/07/05

APPENDIX—Continued

[TAA petitions instituted between 9/26/05 and 10/7/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58091	Beiersporf, Inc. (Comp)	Mariemont, OH	10/07/05	10/03/05
58092	Port Augustus Glass/L.E. Smith Glass (Wkrs)	Mt. Pleasant, PA	10/07/05	09/30/05
58093	Tenneco Automotive (Comp)	Hartwell, GA	10/07/05	10/07/05
58094	Metron North America (State)	Knoxville, TN	10/07/05	10/06/05
58095	Premier Quilting (Comp)	Oxford, NC	10/07/05	09/29/05
58096	Parker Hannifin (Comp)	Goshen, IN	10/07/05	10/07/05
58097	Agilent Technologies (State)	Loveland, CO	10/07/05	10/06/05

[FR Doc. E5–6003 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,110]

Molnlycke Health Care, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 11, 2005 in response to a petition filed by a company official on behalf of workers at Molnlycke Health Care, Inc., El Paso, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 14th day of October 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5996 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,885]

Pliana, Inc., A Division Of Pliana, S.A. De C.V.; Charlotte, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 2, 2005 in response to a worker petition filed a company official on behalf of workers at Pliana, Inc., a division of Pliana, S.A. de C.V., Charlotte, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of October 2005.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6006 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,984]

Sipex Corporation; Milpitas, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 20, 2005 in response to a worker petition which was filed by a company official on behalf of workers at Sipex Corporation, Milpitas, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of October, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6004 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,877 and TA–W–57,877A]

TFL USA/Canada Inc. New Castle, Delaware and Greensboro, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 2, 2005 in response to a petition filed by a company official on behalf of workers at TFL USA/Canada Inc., New Castle, Delaware and TFL USA/Canada Inc., Greensboro, North Carolina.The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 5th day of October, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6008 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of September 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such

workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W 57,598; Tyco Electronics, GIC&E Division, Waterbury, CT
TA–W 57,673; Venture Industries, Hopkinsville, KY
TA–W 57,695; Gerome Manufacturing, Newberg, OR
TA–W 57,706; Martin Crating Co., Inc., McMinnville, TN
TA–W 57,718; Flextronics International USA, Norwood, MA
TA–W 57,720; Northwest Hardwood, Weyerhaeuser Business, Appearance Wood Prod., Little Rock, AR
TA–W 57,722; Janesville Sackner Group, Janesville Products Division, Janesville, WI
TA–W 57,771; Prince Mfg. Co. (The), Bowmanstown, PA
TA–W 57,782; McLaughlin Co. (The), MRC Industrial Group, Inc., Petoskey, MI
TA–W 57,794; Cognis Corporation, Cincinnati, OH
TA–W 57,796; TCS Manufacturing, Inc., Jamestown, NY
TA–W 57,804; Kellwood Company, Intimate Apparel Group, Summit, MS
TA–W 57,804A; Kellwood Company, Intimate Apparel Group-Fernwood MS, Summit, MS
TA–W 57,804B; Kellwood Company, Intimate Apparel Group-Summit MS, Summit, MS
TA–W 57,808; Nomaco Div. of Noel, Inc., Tarboro, NC
TA–W 57,870; International Paper Co., Printing & Converting Div. Bastrop, LA
TA–W 57,994; Johnnie Overstreet, Gen. Contractor—Jefferson Parish, Marrero, LA

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W 57,422A; Benedict Manufacturing Company, Big Rapids, MI
TA–W 57,700; Joy Technologies, Inc., Joy Mining Machinery, Mt. Vernon, IL
TA–W 57,709; AMI Doduco, Technitrol, Inc., Reidsville, NC
TA–W 57,725; Hill-Rom Company, Inc., Information Technology Department, Batesville, IN
TA–W 57,736; Owensboro Manufacturing, LLC, Owensboro, KY
TA–W 57,743; Sulzer-Sturm Rapid Response Center, Barboursville, WV
TA–W 57,843; Sierra Pine, Medite Division, Medford, OR
TA–W 57,897; Nypro, Inc., d/b/a Nypro Carolina, Graham, NC

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

57591A; United Wire Hanger Corporation, Wire Garment Hangar Line, Hasbrouk Heights, New Jersey
TA–W 57,744; Nissan Motor Manufacturing, Finance Div., Smyrna, TN
TA–W 57,750; Pennsylvania House La-Z-Boy, Inc., Lewisburg, PA
TA–W 57,757; Meryl Diamond Ltd., New York, NY
TA–W 57,763; Coats North America, Greer, SC
TA–W 57,767; General Electric, Consumer and Industrial Components, Conover, NC
58,027; Carhartt, Inc., Providence, KY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W 57,367; Tellabs Repair and Return Department, Petuluma, CA
TA–W 57,687; IBM Global Services, Phoenix, AZ
TA–W 57,730; Garan Manufacturing Corp., Starkville, MS
TA–W 57,730A; Garan Manufacturing Eupora Mississippi, Eupora, MS
TA–W 57,740; Baron Drawn Steel Corp., Toledo, OH
TA–W 57,753; Gas Transmission Service Company, Div. of the Transcanada Corp., Rosalia, WA
TA–W 57,753A; Gas Transmission Service, Company Div. of the Transcanada Corp., Wallula , WA
TA–W 57,790; Science Applications International, Piscataway, NJ
TA–W 57,793; GE Consumer Finance General Electric Co., Partnership Marketing, Schaumburg, IL
TA–W 57,838; Texstyle, Inc., Manchester, KY
TA–W 57,922; Concentra Network Services, Concentra, Inc., Franklin, TN
TA–W 57,948; Amkor Technology, Chandler, AZ
TA–W 57,985; Carroll Leather, El Paso, TX
TA–W–58,019; Aradian Corporation, San Diego, CA

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

None

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W 57,742; Agilent Technologies, Inc., Electronic Measurements Group, Santa Rosa, CA: May 6, 2005.

TA–W 57,742A; Agilent Technologies, Inc., Electronics Measurements Group, Everett, WA: August 12, 2004

TA–W 57,742AA; Agilent Technologies, Inc., Electronic Measurements Group, Human Resource, Austin, TX: August 12, 2004.

TA–W 57,742B; Agilent Technologies, Inc., Electronic Measurements Group, Chandler, AZ: August 12, 2004.

TA–W 57,742BB; Agilent Technologies, Inc., Electronic Measurements Group, Bonham' TX: August 12, 2004.

TA–W 57,742C; Agilent Technologies, Inc., Electronic Measurements Group, Moreno Valley, CA: August 12, 2004.

TA–W 57,742CC; Agilent Technologies, Inc., Electronic Measurements Group, New Braunfels, TX: August 12, 2004.

TA–W 57,742D; Agilent Technologies, Inc., Electronic Measurements Group, Roseville, CA: August 12, 2004.

TA–W 57,742DD; Agilent Technologies, Inc., Electronic Measurements Group, Richardson, TX: August 12, 2004.

TA–W 57,742E; Agilent Technologies, Inc., Electronic Measurements Group, Santa Clara, CA: August 12, 2004.

TA–W 57,742EE; Agilent Technologies, Inc., Electronic Measurements Group, San Antonio, TX: August 12, 2004.

TA–W 57,742F; Agilent Technologies, Inc., Electronic Measurements Group, Westlake Village, CA: August 12, 2004.

TA–W 57,742FF; Agilent Technologies, Inc., Electronic Measurements Group, South Burlington, VT: August 12, 2004.

TA–W 57,742G; Agilent Technologies, Inc., Electronic Measurements Group, Colorado, WA: August12, 2004.

TA–W 57,742H; Agilent Technologies, Inc., Electronic Measurements Group, Englewood, CO: August 12, 2004.

TA–W 57,742HH; Agilent Technologies, Inc., Electronic Measurements Group, Liberty Lake, WA: August 12, 2004.

TA–W 57,742I; Agilent Technologies, Inc., Electronic Measurements Group, Highlands Ranch, CO: August 12, 2004.

TA–W 57,742J; Agilent Technologies, Inc., Electronic Measurements Group, Loveland, CO: August 12, 2004.

TA–W 57,742K; Agilent Technologies, Inc., Electronic Measurements Group, Melbourne, FL: August 12, 2004.

TA–W 57,742L; Agilent Technologies, Inc., Electronic Measurements Group, Alpharetta, GA: August 12, 2004.

TA–W 57,742M; Agilent Technologies, Inc., Electronic Measurements Group, Powder Springs, GA: August 12, 2004.

TA–W 57,742N; Agilent Technologies, Inc., Electronic Measurements Group, Woodbine, GA: August 12, 2004.

TA–W 57,742O; Agilent Technologies, Inc., Electronic Measurements Group, Crystal Lake, IL: August 12, 2004.

TA–W 57,742P; Agilent Technologies, Inc., Electronic Measurements Group, Steger, IL: August 12, 2004.

TA–W 57,742Q; Agilent Technologies, Inc., Electronic Measurements Group, Andover, MA: August 12, 2004.

TA–W 57,742R; Agilent Technologies, Inc., Electronic Measurements Group, Northampton, MA: August 12, 2004.

TA–W 57,742S; Agilent Technologies, Inc., Electronic Measurements Group, Budd Lake, NJ: August 12, 2004.

TA–W 57,742T; Agilent Technologies, Inc., Electronic Measurements Group, Durham, NC: August 12, 2004.

TA–W 57,742U; Agilent Technologies, Inc., Electronic Measurements Group, Mentor:, OH: August 12, 2004.

TA–W 57,742V; Agilent Technologies, Inc., Electronic Measurements Group, Tigard, OR: August 12, 2004.

TA–W 57,742W; Agilent Technologies, Inc., Electronic Measurements Group, Henryville, PA: August 12, 2004.

TA–W 57,742X; Agilent Technologies, Inc., Electronic Measurements Group, Bluffton, SC: August 12, 2004.

TA–W 57,742Y; Agilent Technologies, Inc., Electronic Measurements Group, Putnam, TN: August 12, 2004.

TA–W 57,742Z; Agilent Technologies, Inc., Electronic Measurements Group, Infrastructure Support, Austin, TX: August 12, 2004.

TA–W 57,928; Wabash Alloys, Wabash, IN, September 9, 2004.

TA–W 57,946; Acme Gear CO: Englewood NJ: September 13, 2004.

TA–W 57,989; Wasley Products, Inc. Plainville, CT: September 16, 2004.

TA–W 57,591; United Wire Hanger Corporation, Wire Garment Hangar Line, Hasbrouk Heights, New Jersey: June 28, 2004.

TA–W 57,601; Manner Textile Processing, Haledon, NJ: June 29, 2004.

TA–W 57,635; St. John Knits, Alhambra, CA: July 1, 2004.

TA–W 57,654; Oriental Accent, Inc., Farmers Branch, TX: August 1, 2004.

TA–W 57,680; Joan Fabrics Corporation, Newton Finishing Plant, Newton NC: July 17, 2005.

TA–W 57,680A; Joan Fabrics Corporation Hickory Div., Pilot Weaving, Weaving, Corp. Marketing Hickory NC: July 17, 2005.

TA–W 57,688; O'Sullivan Industries, Inc., Ransdstad, Lamar, MO: June 11, 2005.

TA–W 57,688A; O'Sullivan Industries, Inc., O'Sullivan Industries Holdings, Inc., South Boston, VA: June 11, 2005.

TA–W 57,691; Falcon Products, Metal Chair Div., Morristown, TN: August 8, 2004.

TA–W 57,693; Ironees Company (The), Philadelphia, PA: July 25, 2004.

TA–W 57,701; Old Pro Cover Company, Holly Hill, SC: August 8, 2004.

TA–W 57,723; Carlisle Engineered Products, Inc., Advance Placement, Career Concept, Staffing Serv., Lake City, PA: August 05, 2004.

TA–W 57,737; Caribou Ltd., Hicksville, NY: July 29, 2004.

TA–W 57,738; Vander-Bend Mfg., LLC, Sunnyvale, CA: August 1, 2004.

TA–W 57,747; Mountaintop Manufacturing, Action Personnel, One Source, Procure, Mountaintop, PA: August 15, 2004.
TA–W 57,754; Delphi Corp., Automotive Holdings (Delphi Energy Chassis) Kettering, OH: August 23, 2005.
TA–W 57,756; FiberMark, Warren Glen Location, Milford, NJ: August 16, 2004.
TA–W 57,756A; FiberMark, Hughesville Location, Milford, NJ: August 16, 2004.
TA–W 57,760; Clarion Technologies, South Haven, MI: August 11, 2004.
TA–W 57,761; Stimson Lumber Company, Bonner, MT: August 16, 2004.
TA–W 57,766; Southern Graphic Systems, Div. of Alcoa Business, Louisville, KY: August 17, 2004.
TA–W 57,774; Preco Electronics, Inc., Adecco Staffing, Boise, ID: May 21, 2005.
TA–W 57,775; Pleasant Hill Veneer Corp., Pleasant Hill, MO: July 27, 2004.
TA–W 57,788; AmbiTech, Inc., Chatsworth, CA: August 3, 2004.
TA–W 57,789; Amveco Magnetics, Inc., Houston TX: September 10, 2004.
TA–W 57,801; Johnson Controls, Inc., Automotive Group-Interiors, Holland, MI: August 11, 2004.
TA–W 57,802; Sara Lee Corporation, Winston-Salem NC: July 29, 2004.
TA–W 57,805; Edward Fields, Inc., College Point, NY: July 28, 2004.
TA–W 57,809; R.J. Reynolds Tobacco Company, Lucky Strikes Storage Facility, Richmond, VA: August 09, 2004.
TA–W 57,828; Hold-E-Zee, Ltd., Meadville, PA: July 28, 2004.
TA–W 57,831; DSM Nutritional Products, Inc., Belvidere NJ: August 24, 2004.
TA–W 57,857; Delta Mills, Inc., Beattie Plant, Wallace, SC: August 29, 2004.
TA–W 57,857A; Delta Mills, Inc., Delta Plant No. 2—Div. Woodside Industries, Inc., Wallace SC: August 29, 2004.
TA–W 57,857B; Delta Mills, Inc., Delta Plant No. 3—Div. Woodside Industries, Inc., Wallace, SC: August 29, 2004.
TA–W 57,857C; Delta Mills, Inc., Pamplico—Div. Woodside Industries, Inc., Wallace, SC: August 29, 2004.
TA–W 57,862; Novacel, Inc., Newton, MA: August 17, 2004.
TA–W 57,875; Levolor Kirsch Window Fashions, Spherion, Freeport, IL: December 5, 2004.
TA–W 57,881; Champion Laboratories, Inc., Albion, IL: August 27, 2004.
TA–W 57,920; Phoenix Metallurgical, Inc., Hopedale, MA: September 8, 2004.
TA–W 57,967; LXD, Inc., Cleveland, OH: September 8, 2004.
TA–W 57,976; Honeywell International, Inc., Consumer Products, Manpower, Adecco, Kelly, etc Lynn Haven, FL: September 13, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W 57,742A; Agilent Technologies, Inc. Electronic Measurements Group, Everett, WA: August 12, 2004.
TA–W 57,833; A.O. Smith Corporation, Upper Sandusky, OH: August 15, 2004.
TA–W 57,467; Texas Instruments, Final Test and Production, Tucson, AZ: June 24, 2004.
TA–W 57,691A; Falcon Products, Wood Frame Upholstered Furniture Div. Morristown, TN: August 8, 2004.
TA–W 57,696; ICU Medical Formerly Hospira, Salt Lake City, UT: August 5, 2004.
TA–W 57,710; Braden Mfg., LLC, Tulsa, OK: August 05, 2004.
TA–W 57,727; Old Mother Hubbard Inc., Ayer, MA: August 11, 2004.
TA–W 57,727A; Old Mother Hubbard Inc., Chelmsford, MA: August 11, 2004.
TA–W 57,745A; USR Optonix MCI Optonix Division, Express Personnel, Cedar Knolls, NJ: August 15, 2004.
TA–W 57,746; Joan Fabrics, Mastercraft Fabrics, Spindale, NC: August 05, 2004.
TA–W 57,746A; Joan Fabrics, Mastercraft Fabrics, Spindale, NC: August 05, 2004.
TA–W 57,746B; Joan Fabrics, Mastercraft Fabrics, Spindale, NC: November 11, 2005.
TA–W 57,770; Elementis Pigments Corporation, East St. Louis, IL: August 11, 2004.
TA–W 57,778; Kemtah Group, Inc., At The Hewlett-Packard Co., Corvallis, OR: August 17, 2004.
TA–W 57,780; Cintas Rockcastle Mfg., Mt. Vernon, KY: August 5, 2004.
TA–W 57,791; Accellent, Corry, PA: August 05, 2004.
TA–W 57,798; Power-One, TriNet, Carlsbad, CA: August 10, 2004.
TA–W 57,803; Viasystems, Consumer Group, Mishawaka, IN: August 18, 2004.
TA–W 57,806; Harper Pet Products, Inc., Harper Leather Goods, Inc., Bedford Park, IL: August 17, 2004.
TA–W 57,810; Stone Apparel, Stone International, LLC, Columbia, SC: August 19, 2004.
TA–W 57,820; Paper Converting Machine Company, Green Bay, WI: September 12, 2005.
TA–W 57,829; Daimler-Chrysler Indianapolis Foundry, Indianapolis, IN: August 22, 2004.
TA–W 57,830; Mallory AC Capacitor, LLC, Glasgow, KY: August 23, 2004.
TA–W 57,836; Ruskin Company, Lau Industries Div., Clayton, OH: August 04, 2004.
TA–W 57,846; UBE Automotive North America, Mason, OH: August 22, 2004.
TA–W 57,853; Indiana Tube, Fort Smith Division, Fort Smith, AR: August 26, 2005.
TA–W 57,868; Northland, A Scott Fetzer Co., Watertown, NY: September 26, 2005.
TA–W 57,869; CarboMedics, Inc., Austin, TX: August 18, 2004.
TA–W 57,872; Ametek/Chatillon and Sons, Inc., Test and Calibration Instruments, Kew Gardens, NY: August 28, 2004.
TA–W 57,873; Conso International Corp., Union, SC: August 29, 2005.
TA–W 57,891; Teradyne, Inc., (TCS Assembly Operations), San Jose, CA: August 26, 2004.
TA–W 57,892; Cardinal Health, El Paso, TX: August 23, 2004.
TA–W 57,926; Avery Dennison Corporation, Statesville, NC: September 9, 2004.
TA–W 57,933; Solectron USA Division, West Palm Beach, FL: September 2, 2004.
TA–W 57,955; FCI USA, Inc., CDC Americas Div., Manpower, Inc., Mt. Union, PA: September 14, 2004.
TA–W 57,959; Hewlett-Packard, Inkjet Supplies Business, Boise, ID: September 15, 2004.
TA–W 57,965; Volex, Inc., Accuforce, Manpower and Foothills, Conover, NC: September 26, 2005.
TA–W 57,966; Rels Acquisition Company, Inc., (DBA) Rels MFG, Inc. (Parent Co. IBCC Group, Inc.), Rockford, MN: September 15, 2005.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

TA–W 57,745; USR Optonix, Phosphor Division, Hackettstown, NJ: August 15, 2004.
TA–W 57,759; Unifi, Inc., Central Distribution Center, Mayodan, NC: August 16, 2004.
TA–W 57,776; Brockway Pressed Metals, Inc., Brockway, PA: August 17, 2004.
TA–W 57,825; Vectron International, Inc., Dover Electronics, Norwalk, CT: August 15, 2004.

The following certification has been issued. The requirement of downstream

producer to a trade certified firm has been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W 57,635; St. John Knits, Alhambra, CA

TA–W 57,710; Braden Mfg., LLC, Tulsa, OK

TA–W 57,747; Mountaintop Manufacturing, Including Onsite Personnel from Action Personnel, One Source, Procure, Mountaintop, PA

TA–W 57,766; Southern Graphic Systems, Div. of Alcoa Business, Louisville, KY

TA–W 57,825; Vectron International, Inc., Dover Electronics, Norwalk, CT

TA–W 57,828; Hold-E-Zee, Ltd., Meadville, PA

TA–W 57,829; Daimler-Chrysler Indianapolis Foundry, Indianapolis, IN

TA–W 57,836; Ruskin Company, Lau Industries Div., Clayton, OH

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W 57,727; Old Mother Hubbard Inc., Ayer, MA

TA–W 57,778: Kemtah Group, Inc., At The Hewlett-Packard Co., Corvallis, OR

TA–W 57,727A; Old Mother Hubbard Inc., Chelmsford, MA

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W 57,422A; Benedict Manufacturing Company, Big Rapids, MI

TA–W 57,591A; United Wire Hanger Corporation, Wire Garment Hangar Line, Hasbrouk Heights, New Jersey

TA–W 57,744; Nissan Motor Manufacturing, Finance Div., Smyrna, TN

TA–W 57,750; Pennsylvania House, La-Z-Boy, Inc., Lewisburg, PA

TA–W–57,757; Meryl Diamond Ltd., New York, NY

TA–W–57,767; General Electric Consumer and Industrial Components, Conover, NC

TA–W–57,598; Tyco Electronics, GIC&E Division, Waterbury, CT

TA–W–57,709; AMI Doduco, Technitrol, Inc., Reidsville, NC

TA–W–57,736; Owensboro Manufacturing, LLC, Owensboro, KY

TA–W–57,743; Sulzer-Sturm Rapid Response Center, Barboursville, WV

TA–W–57,808; Nomaco, Div. of Noel, Inc., Tarboro, NC

TA–W–57,843; Sierra Pine, Medite Division, Medford, OR

TA–W–57,897; Nypro, Inc., d/b/a Nypro Carolina, Graham, NC

TA–W–57,695; Gerome Manufacturing, Newberg, OR

TA–W–57,718; Flextronics International USA, Norwood, MA

TA–W–57,720; Northwest Hardwood, Weyerhaeuser Business, Appearance Wood Prod., Little Rock, AR

TA–W–57,722; Janesville Sackner Group, Janesville Products Division, Janesville, WI

TA–W 57,771; Prince Mfg. Co. (The), Bowmanstown, PA

TA–W 57,782; McLaughlin Co. (The), MRC Industrial Group, Inc., Petoskey, MI

TA–W 57,794; Cognis Corporation, Cincinnati, OH

TA–W 57,796; TCS Manufacturing, Inc., Jamestown, NY

TA–W 57,804; Kellwood Company, Intimate Apparel Group, Summit, MS

TA–W 57,804A; Kellwood Company, Intimate Apparel Group—Fernwood, MS, Summit, MS

TA–W 57,804B; Kellwood Company, Intimate Apparel Group—Summit, MS

TA–W 57,870; International Paper Co., Printing & Converting Div., Bastrop, LA

TA–W 57,994; Johnnie Overstreet, Gen. Contractor—Jefferson Parish, Marrero, LA

TA–W 57,367; Tellabs, Repair and Return Department, Petuluma, CA

TA–W 57,687; IBM Global Services, Phoenix, AZ

TA–W 57,700, Joy Technologies, Inc., Joy Mining Machinery, Mt. Vernon, IL

TA–W 57,730; Garan Manufacturing Corp., Starkville, MS: August 15, 2005.

TA–W 57,730A; Garan Manufacturing Eupora Mississippi, Eupora, MS: August 15, 2005.

TA–W 57,740; Baron Drawn Steel Corp., Toledo, OH: August 28, 2005.

TA–W 57,753; Gas Transmission Service Company, Div. of the Transcanada Corp., Rosalia, WA

TA–W 57,753A; Gas Transmission Service Company, Div. of the Transcanada Corp., Wallula, WA

TA–W 57,790; Science Applications International, Piscataway, NJ

TA–W 57,793; GE Consumer Finance, General Electric Co., Partnership Marketing, Schaumburg, IL

TA–W 57,838; Texstyle, Inc., Manchester, KY

TA–W 57,922; Concentra Network Services, Concentra, Inc., Franklin, TN

TA–W 57,948; Amkor Technology, Chandler, AZ

TA–W 57,985; Carroll Leather, El Paso, TX

TA–W–58,019; Aradian Corporation, San Diego, CA

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W 57,422; Benedict Manufacturing Company, Big Rapids, MI: June 17, 2004.

TA–W 57,591; United Wire Hanger Corporation, Wire Garment Hangar Line, Hasbrouk Heights, New Jersey: June 28, 2004

TA–W 57,654; Oriental Accent, Inc., Farmers Branch, TX: August 1, 2004.

TA–W 57,680; Joan Fabrics Corporation, Newton Finishing Plant, Newton, NC: July 17, 2005.

TA–W 57,680A; Joan Fabrics Corporation, Hickory Div., Pilot Weaving, Weaving, Corp. Marketing, Hickory, NC: : July 17, 2005.

TA–W 57,754; Delphi Corp., Automotive Holdings (Delphi Energy Chassis), Kettering, OH: August 23, 2005.

TA–W 57,774; Preco Electronics, Inc., Adecco Staffing, Boise, ID: May 21, 2005.

TA–W 57,789; Amveco Magnetics, Inc., Houston, TX: September 10, 2004.

TA–W 57,831; DSM Nutritional Products, Inc., Belvidere, NJ: August 24, 2004.

TA–W 57,862; Novacel, Inc., Newton, MA: August 17, 2004.

TA–W 57,875; Levolor Kirsch Window Fashions, Spherion, Freeport, IL: December 5, 2004.

TA–W 57,967; LXD, Inc., Cleveland, OH: September 8, 2004.

TA–W 57,976; Honeywell International, Inc., Consumer Products, Manpower, Adecco, Kelly, etc, Lynn Haven, FL: September 13, 2004.

TA–W 57,601; Manner Textile Processing, Haledon, NJ: June 29, 2004.

TA–W 57,688; O'Sullivan Industries, Inc., Ransdstad, Lamar, MO: June 11, 2005.

TA–W 57,688A; O'Sullivan Industries, Inc., O'Sullivan Industries Holdings, Inc., South Boston, VA: June 11, 2005.

TA–W 57,691; Falcon Products, Metal Chair Div., Morristown, TN: August 8, 2004.

TA–W 57,693; Ironees Company (The), Philadelphia, PA: July 25, 2004.

TA–W 57,701; Old Pro Cover Company, Holly Hill, SC: August 8, 2004.

TA–W 57,723; Carlisle Engineered Products, Inc., Advance Placement, Career Concept, Staffing Serv., Lake City, PA: August 05, 2004.

TA–W 57,738; Vander-Bend Mfg., LLC, Sunnyvale, CA: August 1, 2004.

TA–W 57,756; FiberMark, Warren Glen Location, Milford, NJ: August 16, 2004.

TA–W 57,756A; FiberMark, Hughesville Location, Milford, NJ: August 16, 2004.

TA–W 57,760; Clarion Technologies, South Haven, MI: August 11, 2004.

TA–W 57,761; Stimson Lumber Company, Bonner, MT: August 16, 2004.

TA–W 57,775; Pleasant Hill Veneer Corp., Pleasant Hill, MO: August 26, 2005

TA–W 57,788; AmbiTech, Inc., Chatsworth, CA: August 3, 2004.

TA–W 57,809; R.J. Reynolds Tobacco Company, Lucky Strikes Storage Facility, Richmond, VA: August 09, 2004.

TA–W 57,857; Delta Mills, Inc., Beattie Plant, Wallace, SC August 29, 2004.

TA–W 57,857A; Delta Mills, Inc., Delta Plant No. 2—Div. Woodside Industries, Inc., Wallace, SC August 29, 2004.

TA–W 57,857B; Delta Mills, Inc., Delta Plant No. 3—Div. Woodside Industries, Inc., Wallace, SC August 29, 2004.

TA–W 57,857C; Delta Mills, Inc., Pamplico—Div. Woodside Industries, Inc., Wallace, SC August 29, 2004.

TA–W 57,920; Phoenix Metallurgical, Inc., Hopedale, MA: September 8, 2004.

TA–W 57,467; Texas Instruments, Final Test and Production, Tucson, AZ: June 24, 2004.

TA–W 57,745A; USR Optonix, MCI Optonix Division, Express Personnel, Cedar Knolls, NJ: August 1, 2005.

TA–W 57,696; ICU Medical, Formerly Hospira, Salt Lake City, UT: August 5, 2004.

TA–W 57,746; Joan Fabrics, Mastercraft Fabrics, Spindale, NC: August 5, 2004.

TA–W 57,746A; Joan Fabrics, Mastercraft Fabrics, Spindale, NC: August 5, 2004.

TA–W 57,746B; Joan Fabrics, Mastercraft Fabrics, Spindale, NC: August 05, 2004.

TA–W 57,780; Cintas, Rockcastle Mfg., Mt. Vernon, KY: August 5, 2004.

TA–W 57,791; Accellent, Corry, PA: August 05, 2004.

TA–W 57,798; Power-One, TriNet, Carlsbad, CA: August 10, 2004.

TA–W 57,803; Viasystems, Consumer Group, Mishawaka, IN: August 18, 2004.k

TA–W 57,810; Stone Apparel, Stone International, LLC, Columbia, SC: August 19, 2004.

TA–W 57,830; Mallory AC Capacitor, LLC, Glasgow, KY: August 23, 2004.

TA–W 57,846; UBE Automotive North America, Mason, OH: August 22, 2004.

TA–W 57,853; Indiana Tube, Fort Smith Division, Fort Smith, AR: August 26, 2004.

TA–W 57,868; Northland, A Scott Fetzer Co., Watertown, NY: September 26, 2005.

TA–W 57,869; CarboMedics, Inc., Austin, TX: August 18, 2004.

TA–W 57,872; Ametek/Chatillon and Sons, Inc., Test and Calibration Instruments, Kew Gardens, NY: August 28, 2004.

TA–W 57,873; Conso International Corp., Union, SC: August 29, 2005.

TA–W 57,891; Teradyne, Inc., (TCS Assembly Operations), San Jose, CA: August 26, 2004.

TA–W 57,892; Cardinal Health, El Paso, TX: August 23, 2004.

TA–W 57,933; Solectron, USA Division, West Palm Beach, FL: September 2, 2004.

TA–W 57,955; FCI USA, Inc., CDC Americas Div., Manpower, Inc., Mt. Union, PA: September 14, 2004.

TA–W 57,959; Hewlett-Packard, Inkjet Supplies Business, Boise, ID: September 15, 2004.

TA–W 57,965; Volex, Inc., Accuforce, Manpower and Foothills, Conover, NC: September 26, 2005.

TA–W 57,691A; Falcon Products, Wood Frame Upholstered Furniture Div., Morristown, TN: August 8, 2004.

TA–W 57,770; Elementis Pigments Corporation, East St. Louis, IL: August 11, 2004.

TA–W 57,806; Harper Pet Products, Inc., Harper Leather Goods, Inc. Bedford Park, IL: August 17, 2004.

TA–W 57,820; Paper Converting Machine Company, Green Bay, WI: September 12, 2005.

TA–W 57,966; Rels Acquisition Company, Inc., (DBA) Rels MFG., Inc. (Parent Co. IBCC Group, Inc.), Rockford, MN: September 15, 2004.

TA–W 57,745; USR Optonix, Phosphor Division, Hackettstown, NJ: August 15, 2004.

TA–W 57,759; Unifi, Inc., Central Distribution Center, Mayodan, NC: August 16, 2004.

TA–W 57,776; Brockway Pressed Metals, Inc., Brockway, PA: August 17, 2004.

I hereby certify that the aforementioned determinations were issued during the month of September 2005. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 19, 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–6010 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,512]

US Airways, Inc. Myrtle Beach, SC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at U.S. Airways, Inc., Myrtle Beach, South Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,512; U.S. Airways, Inc., Myrtle Beach, South Carolina (October 20, 2005).

Signed at Washington, DC, this 20th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–5995 Filed 10–28–05; 8:45 am]

BILLING CODE 4510–30–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–18]

Notice of the November 8, 2005 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Tuesday, November 8, 2005

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Joyce B. Lanham via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to consider the selection of countries that will be eligible for FY 2006 Millennium Challenge Account (''MCA'') assistance under section 607 of the Millennium Challenge Act of 2003 (the ''Act''), codified at 22 U.S.C. 7706, or Threshold Program assistance under Section 616 of the Act; discuss progress on proposed Compacts with certain MCA-eligible countries; discuss MCC's proposed policy on suspension and termination of assistance and eligibility; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: October 27, 2005.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 05–21713 Filed 10–27–05; 11:42 am]

BILLING CODE 9210–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: November 17, 2005, 8:30 a.m.–5 p.m.; November 18, 2005, 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. James P. Collins, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Planning and Issues Discussion:

- Committee of Visitors Reports
- Cyberinfrastructure
- NEON Update

Dated: October 26, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–21628 Filed 10–28–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–199]

Manhattan College; (Manhattan College Zero Power Reactor); Notice of Approval of Decommissioning Plan and Notice of License Termination

The U.S. Nuclear Regulatory Commission (NRC) is noticing the termination of Facility Operating License No. R–97 for the Manhattan College (MC) Zero Power Reactor (MCZPR).

The NRC has terminated the license of the decommissioned MCZPR, which was in the Leo Engineering Building of Manhattan College, Riverdale, New York, and has released the site for unrestricted use. The licensee requested termination of the license in a letter to NRC dated February 3, 2005. The MCZPR, a 0.1 watt swimming pool reactor, was constructed in 1964 and operated under License No. R–94. The reactor was permanently shut down in 1995. On March 23, 1999, NRC approved the decommissioning plan (DP) dated July 21, 1998, by License Amendment No. 12.

A Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission Manhattan College Zero Power Research Reactor appeared in the **Federal Register** on February 12, 1999 (64 FR 7214). The staff considered all comments received during the review of the MCZPR decommissioning plan.

The NRC completed its review of the December 2004 final status survey report (FSSR) for the Reactor Facility at Manhattan College School of Engineering. The licensee submitted the report to NRC by letter dated February 3, 2005. The report documented the level of residual radioactivity remaining at the facility and stated that compliance with the criteria as approved in the NRC-approved DP had been demonstrated.

Pursuant to 10 CFR 50.82(b)(6), the NRC staff concluded that the decommissioning has been performed in accordance with the approved DP and that the final terminal radiation survey and associated documentation demonstrate that the facility and site are suitable for release in accordance with the criteria in the NRC-approved DP. Furthermore, on the basis of the decommissioning activities carried out by MC, the NRC's review of the licensee's FSSR, the results of NRC's inspections conducted at MC, and the results of NRC's confirmatory surveys, the NRC has concluded that the

decommissioning process is complete and the facility and site are suitable to be released for unrestricted use. Based on the NRC staff's conclusions, Facility Operating License No. R–94 is terminated.

For further details, see the licensee's application for decommissioning dated December 18, 1997, July 21, October 29, and November 10, 1998, and January 6, 1999; License Amendment No. 12 to Facility Operating License No. R–94; the licensee's February 3, 2005, request for license termination; the December 2004 FSSR for the Reactor Facility at the Manhattan College School of Engineering, submitted to NRC by letter dated February 3, 2005 and NRC Inspection Report 50–199/2005–201, dated July 15, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records for MC dated after January 30, 2000, will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737 or at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of October 2005.

For the Nuclear Regulatory Commission.

Brian E. Thomas,

Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5992 Filed 10–28–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 030–34681]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Morphochem, Inc.'s Facility in Monmouth Junction, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Morphochem, Inc. for Materials License No. 29–30442–01, to authorize release of its facility in Monmouth Junction, New Jersey for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Monmouth Junction, New Jersey facility for unrestricted use. Morphochem, Inc. was authorized by NRC from 1998 to use radioactive materials for research and development purposes at the site. On August 8, 2005, Morphochem, Inc. requested that NRC release the facility for unrestricted use. Morphochem, Inc. has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Morphochem, Inc. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Morphochem, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' [ML042310492, ML042320379 and ML042330385]. Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: ''Environmental Assessment Related to an Amendment of U.S. Nuclear Regulatory Commission Materials License No. 29–30442–01, Issued to Morphochem, Inc.'' [ML052940097]; and ''Termination of NRC License Number 29–30442–01'' dated August 8, 2005 [ML052270172]. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html.*

Dated at King of Prussia, Pennsylvania, this 21st day of October, 2005.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–5994 Filed 10–28–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Workshop on Draft Report for Comment: ''Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process,'' NUREG–1829

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of public workshop. Revision of workshop date.

DATES: Workshop date, November 9, 2005.

Background: The Nuclear Regulatory Commission (NRC) issued draft NUREG–1829, ''Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process,'' for public comment in June 2005. The report is available under ADAMS Accession Number ML051520574 and on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1829/*. A separate notice was published in the **Federal Register** on October 4, 2005, announcing the availability of this report (70 FR 57901). This report describes LOCA frequency estimates developed using an expert elicitation process in support of an effort to develop a risk-informed revision of the emergency core cooling system (ECCS) requirements for commercial nuclear power plants by redefinition of the design-basis break size. The expert elicitation process consolidates service history data and insights from probabilistic fracture mechanics (PFM) studies with knowledge of plant design, operation, and material performance to arrive at the LOCA frequency estimates.

The ECCS requirements in the United States are contained in 10 CFR 50.46, Appendix K to part 50, and General Design Criterion (GDC) 35. Specifically, ECCS design, reliability, and operating requirements exist to ensure that the system can successfully mitigate postulated LOCAs. Consideration of an instantaneous break with a flow rate equivalent to a double-ended guillotine break (DEGB) of the largest pipe in the primary piping system of the plant generally provides the limiting condition in the required 10 CFR part 50, Appendix K analysis. However, the DEGB is widely recognized as an extremely unlikely event, so NRC staff is performing a risk-informed revision of the design-basis break size requirements.

A central consideration in selecting a risk-informed design basis break size is an evaluation of the LOCA frequency as a function of break size. The most recent NRC-sponsored study of pipe break failure frequencies is contained in NUREG/CR–5750 (Poloski, 1999). Unfortunately, these estimates are not sufficient for design basis break size selection because they do not address all current passive-system degradation concerns (e.g., primary water stress corrosion cracking) and they do not discriminate among breaks having effective diameters greater than 6 inches.

There have been two approaches traditionally used to estimate LOCA frequencies and their relationship to pipe size: (i) Estimates based on statistical analysis of service experience data, and (ii) PFM analysis of specific postulated failure mechanisms. Neither approach is fully suitable for evaluating LOCA event frequencies due to the rarity of these events and the modeling complexity. This study used an expert elicitation process, which is well-recognized for quantifying phenomenological knowledge when data or modeling approaches are insufficient. Elicitation responses from a panel of 12 experts determined individual LOCA frequency estimates for the 5th percentile, median, mean and 95th percentile of the frequency distribution for each of six LOCA categories. Group estimates were determined by aggregating the individual estimates using the geometric mean of the individual estimates for each frequency parameter (i.e., median, mean, 5th and 95th percentiles). Group variability was estimated by calculating 95% confidence bounds for each of the group frequency parameters. A number of sensitivity analyses were conducted to examine the effects on the quantitative results from variation of the assumptions, structure and techniques of the baseline analysis procedure.

Public Workshop: The NRC will conduct a public workshop on Wednesday, November 9, 2005, to be held in room O6B4 at NRC Headquarters, 11545 Rockville Pike, Rockville, Maryland. This is a revision to the October 31, 2005, workshop date announced in the **Federal Register** Notice published, October 4, 2005; 70 FR 57901. The purpose of the workshop is to facilitate the comment process. In the workshop, the staff will provide an overview of the report and address clarification of items identified by the public. A preliminary agenda is attached. Persons planning to attend this meeting are urged to contact the below named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda. The NRC seeks comments on the report and is especially interested in comments on the following questions:

1. Is the structure of the expert elicitation process appropriate for the stated problem and goals of the study?

2. Are the assumptions and methodology of the analysis framework used to process the panel responses appropriate and reasonable? Are they consistent with the type of information provided by the expert panel and the goals of the study?

3. Is the geometric mean aggregation methodology appropriate for the panel responses and the study goals? Should other aggregation methodologies be considered and what are their advantages and disadvantages?

As previously published in the **Federal Register**, October 4, 2005; 70 FR 57901, the NRC will consider all written comments on draft NUREG–1829, ''Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process,'' received before November 30, 2005. Comments received after November 30, 2005, will be considered if time permits. Comments should be addressed to the contact listed below. An electronic version of the report and the accompanying experts' raw data files, are available electronically at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1829/* and through the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From the latter site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document title	ADAMS Accession No.	File format
NUREG–1829	ML051520574	Adobe Acrobat Document.
BWR Non-piping Raw Data for NUREG–1829	ML051580341	Adobe Acrobat Document.
BWR Piping Raw Data for NUREG–1829	ML051580344	Adobe Acrobat Document.
PWR Non-piping Raw Data for NUREG–1829	ML051580346	Adobe Acrobat Document.

Document title	ADAMS Accession No.	File format
PWR Piping Raw Data for NUREG–1829	ML051580347	Adobe Acrobat Document.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Dr. Charles A. Greene, Mail Stop T10E10, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852, telephone (301) 415–6177, facsimile number: (301) 415–5074, e-mail *cag2@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of October 2005.

For the Nuclear Regulatory Commission.

Jennifer Uhle,

Chief, Materials Engineering Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

Attachment—Preliminary Agenda

Public Workshop on Draft Report for Comment: ''Estimating Loss-of-Coolant Accident (LOCA) Frequencies through the Elicitation Process,'' NUREG–1829

November 9, 2005—9 a.m.–12 p.m., Room O–4B6*

Preliminary Agenda

9 a.m.–9:15 a.m.—Introduction
9:15 a.m.–9:45 a.m.—Overview of NUREG–1829
9:45 a.m.–10:15 a.m.—Clarification of items identified by the public
10:15 a.m.–10:30 a.m.—Break
10:30 a.m.–12 noon—Clarification of items identified by the audience
12 noon—Adjourn

*Revised date

[FR Doc. 05–21650 Filed 10–28–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: David Guilford, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1391.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between September 1, 2005, and September 30, 2005.

Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter.

A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for September 2005.

Schedule B

No Schedule B appointments were approved for September 2005.

Schedule C

The following Schedule C appointments were approved during September 2005:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60150 Confidential Assistant to the Controller, Office of Federal Financial Management. Effective September 29, 2005.

Office of National Drug Control Policy

QQGS00041 Legislative Assistant to the Associate Director, Legislative Affairs. Effective September 20, 2005.

Section 213.3304 Department of State

DSGS60987 Program Support Assistant to the Deputy Chief of Protocol. Effective September 02, 2005.

DSGS60988 Special Assistant to the Assistant Secretary, Bureau for Educational and Cultural Affairs. Effective September 09, 2005.

DSGS60990 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective September 16, 2005.

DSGS60965 Public Affairs Specialist to the Deputy Chief of Protocol. Effective September 27, 2005.

DSGS60997 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective September 30, 2005.

Section 213.3305 Department of the Treasury

DYGS00424 Senior Advisor to the Assistant Secretary (Economic Policy). Effective September 20, 2005.

DYGS00410 Senior Advisor to the Deputy Secretary of the Treasury. Effective September 29, 2005.

DYGS00359 Senior Advisor to the Under Secretary for International Affairs. Effective September 29, 2005.

DYGS00463 Special Assistant to the Assistant Secretary (Management) and Chief Financial Officer. Effective September 29, 2005.

Section 213.3306 Office of the Secretary of Defense

DDGS16888 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia). Effective September 06, 2005.

DDGS16890 Special Assistant to the Deputy Under Secretary of Defense (Resource Planning/Management). Effective September 06, 2005.

DDGS16894 Personal and Confidential Assistant to the Principal Under Secretary of Defense (Policy). Effective September 06, 2005.

DDGS16895 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective September 20, 2005.

Section 213.3307 Department of the Army

DWGS60084 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs)/Deputy Assistant Secretary (Training, Readiness and Mobilization). Effective September 08, 2005.

DWGS60018 Special Assistant to the Assistant Secretary of the Army (Installations and Environment). Effective September 27, 2005.

Section 213.3309 Department of the Air Force

DFGS60014 Personal and Confidential Assistant to the General Counsel. Effective September 27, 2005.

Section 213.3310 Department of Justice

DJGS00403 Public Affairs Specialist to the Director, Office of Public Affairs. Effective September 02, 2005.

DJGS00135 Special Assistant to the Assistant Attorney General, Tax

Division. Effective September 09, 2005.
DJGS00207 Special Assistant to the Director of the Violence Against Women Office. Effective September 09, 2005.
DJGS00317 Deputy Chief of Staff to the Assistant Attorney General, Criminal Division. Effective September 23, 2005.

Section 213.3311 Department of Homeland Security

DMGS00417 Executive Assistant to the Chief of Staff. Effective September 02, 2005.
DMGS00419 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs. Effective September 06, 2005.
DMGS00414 Special Assistant and Senior Writer-Editor to the Executive Secretary. Effective September 08, 2005.
DMGS00418 Special Assistant to the Assistant Secretary, Immigration and Customs Enforcement. Effective September 09, 2005.
DMGS00416 Director of Ports Media Division to the Assistant Commissioner for Public Affairs. Effective September 12, 2005.
DMGS00420 Staff Assistant to the Director of Scheduling and Advance. Effective September 13, 2005.
DMGS00422 Assistant Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Affairs. Effective September 14, 2005.
DMGS00423 Policy Advisor to the Chief of Staff. Effective September 14, 2005.
DMGS00421 Confidential Assistant to the Chief Medical Officer. Effective September 15, 2005.
DMGS00424 Deputy Executive Secretary to the Executive Secretary. Effective September 27, 2005.
DMGS00413 Legislative Policy Advisor to the Deputy Assistant Secretary for Border and Transportation Security Policy. Effective September 28, 2005.
DMGS00409 Special Assistant to the Chief of Staff. Effective September 29, 2005.
DMOT00395 Special Assistant to the Assistant Secretary, Transportation Security Administration. Effective September 29, 2005.

Section 213.3312 Department of the Interior

DIGS01046 Special Assistant Advance to the Director, Scheduling and Advance. Effective September 23, 2005.
DIGS79003 Special Assistant (Communication) to the Director, External and Intergovernmental Affairs. Effective September 30, 2005.

Section 213.3313 Department of Agriculture

DAGS00822 Special Assistant to the Associate Administrator, Programs. Effective September 02, 2005.
DAGS00824 Confidential Assistant to the Deputy Assistant Secretary. Effective September 15, 2005.
DAGS00826 Special Assistant to the Administrator, Agricultural Marketing Service. Effective September 28, 2005.

Section 213.3314 Department of Commerce

DCGS60163 Executive Assistant to the Deputy Secretary. Effective September 02, 2005.
DCGS60677 Director, Office of Energy, Environment and Materials to the Deputy Assistant Secretary for Manufacturing. Effective September 15, 2005.
DCGS00382 Confidential Assistant to the Deputy Chief of Staff for Policy. Effective September 16, 2005.
DCGS00470 Confidential Assistant to the Director, Executive Secretariat. Effective September 16, 2005.
DCGS00485 Special Assistant to the Director, Office of External Affairs. Effective September 16, 2005.
DCGS60548 Executive Assistant to the Assistant Secretary. Effective September 16, 2005.
DCGS00657 Confidential Assistant to the Director of Advance. Effective September 26, 2005.
DCGS00473 Confidential Assistant to the General Counsel. Effective September 30, 2005.
DCGS00191 Special Assistant to the General Counsel. Effective September 30, 2005.
DCGS00664 Special Assistant to the Assistant Secretary and Director General of the United States. Effective September 30, 2005.

Section 213.3315 Department of Labor

DLGS60119 Staff Assistant to the Chief of Staff. Effective September 27, 2005.
DLGS60201 Special Assistant to the Secretary of Labor. Effective September 29, 2005.

Section 213.3316 Department of Health and Human Services

DHGS60665 Deputy Director for Policy, Intergovernmental Affairs to the Director of Intergovernmental Affairs. Effective September 02, 2005.
DHGS60247 Regional Director Philadelphia Region III to the Director of Intergovernmental Affairs. Effective September 07, 2005.
DHGS60023 Special Assistant to the Director, Center for Disease Control and Prevention Administration. Effective September 09, 2005.
DHGS60675 Special Assistant to the Assistant Secretary for Aging (Commissioner for Aging). Effective September 15, 2005.
DHGS60129 Special Assistant to the Administrator, Centers for Medicare and Medicaid Services. Effective September 19, 2005.
DHGS60399 Special Assistant to the Assistant Secretary for Children and Families. Effective September 26, 2005.

Section 213.3317 Department of Education

DBGS00462 Special Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective September 19, 2005.
DBGS00463 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs. Effective September 23, 2005.
DBGS00466 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective September 28, 2005.
DBGS00468 Special Assistant to the Deputy Assistant Secretary for External Affairs and Outreach Services. Effective September 28, 2005.
DBGS00442 Confidential Assistant to the Director, Regional Services. Effective September 30, 2005.

Section 213.3318 Environmental Protection Agency

EPGS05010 Director, Office of Long-Range Communications and Planning to the Associate Administrator for Public Affairs. Effective September 28, 2005.

Section 213.3327 Department of Veterans Affairs

DVGS60006 Special Assistant to the General Counsel. Effective September 16, 2005.
DVGS60036 Protocol Liaison Officer to the Secretary. Effective September 30, 2005.
DVGS60038 Special Assistant to the Deputy Secretary of Veterans Affairs. Effective September 30, 2005.

Section 213.3331 Department of Energy

DEGS00492 Strategic Communications Advisor to the Assistant Secretary for Policy and International Affairs. Effective September 26, 2005.

Federal Energy Regulatory Commission

DRGS51517 Policy Adviser to a Chairman. Effective September 15, 2005.

Section 213.3337 General Services Administration

GSGS00156 Confidential Assistant to the Chief of Staff. Effective September 07, 2005.

GSGS60113 Special Assistant to the Regional Administrator Region 1, Boston. Effective September 07, 2005.

Section 213.3384 Department of Housing and Urban Development

DUGS60362 Staff Assistant to the Assistant Secretary for Policy Development and Research. ffective September 01, 2005.

DUGS60416 Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective September 16, 2005.

Section 213.3394 Department of Transportation

DTGS60192 Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective September 02, 2005.

DTGS60379 Special Assistant to the Director to the Assistant to the Secretary and Director of Public Affairs. Effective September 02, 2005.

DTGS60380 Associate Administrator for Governmental, International, and Public Affairs to the Administrator. Effective September 07, 2005.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Linda M. Springer,

Director, Office of Personnel Management.

[FR Doc. 05–21620 Filed 10–28–05; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52660; File No. SR–CBOE–2005–80]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to Crediting of Certain DPM Principal Acting as Agent Order Transaction Fees

October 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On October 20, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to enhance the credit to Designated Primary Market-Makers (''DPMs'') for transaction fees they incur related to the execution of outbound ''principal acting as agent'' (''P/A'') Orders. The text of the proposed rule change is available on CBOE's Web site, *http://www.cboe.com*, at CBOE's principal office, 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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, pursuant to Section 21 of the CBOE Fees Schedule, credits DPMs for transaction fees they incur related to the execution of outbound P/A Orders, as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage''). This ''Linkage Fee Credit'' is accomplished via a rebate and a credit: (i) the Exchange rebates transaction fees that DPMs incur when they trade against a customer order that underlies a P/A Order the DPM sent through the Linkage; and (ii) the Exchange credits the DPMs up to an additional 50% of such transaction fees (''50% Credit'') to help offset some of the fees the DPMs incur for submitting P/A Orders through the Linkage.[7] Thus, at current rates in equity options, a DPM receives a rebate of the $.12 per contract CBOE transaction fee, and up to an additional $.06 per contract under the 50% Credit, for a total payment of up to $.18 per contract.

The Exchange proposes to enhance the Linkage Fee Credit by replacing the 50% Credit with a credit of up to $.20 per contract. As under the current program, the aggregate amount of the $.20 per contract credit for all DPMs will be limited to no more than the total amount of fees that the Exchange earns from fees generated by inbound Linkage transaction fees. The foregoing credit is apportioned to DPMs pro-rata based on the number of contracts executed by each DPM at other exchanges via P/A Orders. A DPM will be expected to reimburse the Exchange to the extent that the funds received by the DPM via the Linkage Fee Credit program exceed the DPM's actual costs incurred in executing linkage-related transactions.

The Exchange also proposes to modify Section 23 of the Fees Schedule, which includes a cross-reference to Section 21, to reflect the changes to Section 21.

The purpose of the enhanced Linkage Fee Credit program is to further assist DPMs in offsetting the additional costs they incur in routing orders to other exchanges in order to obtain the National Best Bid or Offer. The proposed Linkage Fee Credit program will be effective October 1, 2005 through December 30, 2005.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was withdrawn by CBOE on October 20, 2005.

[4] In Amendment No. 2, the Exchange made non-substantive changes to the purpose of the proposed rule change and to the proposed rule text, clarified the apportionment of the $.20 credit, and added a reimbursement obligation on the part of DPMs in connection with the Linkage Fee Credit described herein.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] *See* Securities Exchange Act Release Nos. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004) (SR–CBOE–2004–08) and 49769 (May 25, 2004), 69 FR 31145 (June 2, 2004) (SR–CBOE–2004–13).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CBOE did not solicit or receive any written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–80 and should be submitted on or before November 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6000 Filed 10–28–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] The effective date of the original proposed rule change is September 30, 2005, and the effective date of Amendment No. 2 is October 20, 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 October 20, 2005, the date on which the Exchange submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52653; File No. SR–DTC–2005–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Use of Contra CUSIP Numbers To Segregate Partially-Called Positions of Participants in Variable Rate Demand Obligation Issues

October 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 3, 2005, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates the use of contra CUSIP numbers to segregate partially-called positions of participants in Variable Rate Demand Obligation (''VRDO'') issues. These positions will be handled in the same manner as all other issue types, with the partially-called positions being segregated in the Call Account under the issue's regularly assigned CUSIP number.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The use of contra CUSIP numbers for VRDO partial calls was designed to facilitate the settlement of trades in called securities. The practice enables participants to process book-entry deliveries versus payment by the submission of Deliver Order (''DO'') transactions, with the ultimate receiving participants of the deliveries being credited with the call proceeds on redemption date. In practice, the use of contra CUSIPs for this purpose is inefficient for participants and for DTC. For example, DTC must maintain security master file linkages of the related CUSIP numbers and separately announce and process the interest payments due participants and their customers based on contra CUSIP positions. Furthermore, thousands of partially-called positions in contra CUSIP numbers are created each month, and DTC has determined that very few DOs are processed.

In place of the use of contra CUSIP's, DTC will now process partially-called positions in VRDO issues in the same manner as all other issue types, with the partially-called positions being segregated in the Call Account under the issue's regularly assigned CUSIP number. DTC believes the rule change is consistent with Section 17A of the Act,[3] as amended, because it will promote efficiency in processing partial calls of VRDO issues. The rule change will be implemented consistently with the safeguarding of securities and funds in the custody or control of DTC because DTC will be processing partial calls of VRDO issues in a similar manner to the way DTC processes partial calls of other issue types.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has discussed this proposed rule change with various participants. DTC circulated an Important Notice on August 4, 2005, describing the proposal and inviting participants to direct comments and questions to DTC (Important Notice B# 8359). DTC received one comment letter from the Regional Municipal Operations Association, which supported the rule change. DTC will notify the Commission of any additional written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because it does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–DTC–2005–15 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–DTC–2005–15. 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 such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *https://login.dtcc.com/dtcorg/.* 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–DTC–2005–15 and should be submitted on or before November 21, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5997 Filed 10–28–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52665; File No. SR–DTC–2005–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Require Members To Purchase Shares of the Common Stock of The Depository Trust & Clearing Corporation

October 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 4, 2005, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the rules of DTC to require that participants of DTC other than Limited Participants purchase shares of common stock of The Depository Trust & Clearing Corporation (''DTCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) DTCC is a holding company for three registered clearing agencies: DTC, the National Securities Clearing Corporation (''NSCC''), and the Fixed Income Clearing Corporation (''FICC''). Pursuant to DTCC's current Shareholders Agreement (''Current Shareholders Agreement''), substantially all members and participants of DTC, NSCC, and FICC (''Participants'') are entitled but are not required to purchase DTCC common shares. Participants are allocated an entitlement to purchase DTCC common shares on the basis of their relative use of the services of DTC, NSCC, and FICC. As of the last periodic allocation of share entitlements in 2003, approximately 1,100 Participants had a right to purchase DTCC common shares; however, only 190 Participants currently own any DTCC common shares and of these only 86 own DTCC common shares up to the full amounts of their share entitlements.

DTCC is currently soliciting the consent of its common shareholders to amend the Current Shareholders Agreement pursuant to which Participants of DTC, NSCC, and FICC that make full use of the services of one or more of these clearing agency subsidiaries of DTCC would be required to purchase DTCC common shares (''Mandatory Purchaser Participants'')[3] in accordance with the terms of the Current Shareholders Agreement while preserving the right but not the obligation of other Participants that make only limited use of their services to purchase DTCC common shares (''Voluntary Purchaser Participants'').[4]

Holders of DTCC common shares are entitled to elect all of the directors of DTCC other than two directors that DTCC preferred shareholders are entitled to elect.[5] DTCC common shareholders are entitled to vote on all other matters submitted to a vote of DTCC shareholders, and each DTCC common shareholder is entitled to one vote per DTCC common share. DTCC common shareholders are entitled to cumulate their votes for the election of directors. In addition, DTCC common shareholders are entitled to receive, when and if declared by the Board of Directors of DTCC, out of assets of DTCC dividends payable in cash or stock or otherwise. However, since DTC, NSCC, and FICC provide their services to their Participants on a cost-basis with revenues in excess of expenses and necessary reserves rebated or on a discounted basis, as a matter of policy and practice DTCC does not pay any dividends on DTCC common shares. The proposed amendments to the Current Shareholders Agreement will have no effect on these rights of DTCC common shareholders and preferred shareholders.

Pursuant to certain covenants in the Current Shareholders Agreement, a person elected a director of DTCC also serves as a director of each of DTC, NSCC, and FICC. The proposed changes in the Current Shareholders Agreement will have no effect on these covenants.

The system for allocating entitlements to purchase shares, which was incorporated into the Current Shareholders Agreement, was first implemented by DTC with respect to DTC common shares in 1973. At that time, the banks that were users of DTC's services purchased their DTC common shares directly but for logistical and other reasons the NYSE, the NASD and the American Stock Exchange (''AMEX'') (collectively, the ''Self-Regulatory Organizations'') purchased the DTC common shares allocated to the broker-dealers that were members of the Self-Regulatory Organizations and users of the services of DTC. It was anticipated that over time as broker-dealers exercised their right to purchase DTC common shares, the number of DTC common shares held by broker-dealers directly would increase and the number of DTC common shares held by the Self-Regulatory Organizations would correspondingly decrease, potentially to zero, since the share entitlements of the Self-Regulatory Organizations were a function of the unexercised share entitlements of their members.

The Self-Regulatory Organizations, notwithstanding the passage of time and the opportunity afforded their members to purchase DTCC common shares, continue to hold a significant block of DTCC common shares. NYSE holds approximately 29% of the outstanding DTCC common shares, and the NASD and the AMEX each holds approximately 3.7%. Accordingly, a total of approximately 36.4% of the outstanding DTCC common shares are not held by Participants but rather are held in a representative capacity by the Self-Regulatory Organizations for broker-dealer Participants which have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. It is also the case that a significant number of Participants other than broker-dealers have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. Ownership of DTCC common shares (and previously ownership of DTC common shares) is not a financial investment but instead is a vehicle for supporting each registered clearing agency and influencing its policies and operations through the election of directors.

By providing that all DTCC common shares are owned by Participants, DTC

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Under the Proposed Shareholders Agreement, a Mandatory Purchaser Participant that is a Participant in more than one clearing agency will be required to purchase DTCC common shares based upon its relative use of the services of all clearing agencies of which it is a Participant.

[4] The proposed DTCC Shareholders Agreement (''Proposed Shareholders Agreement'') marked to show the proposed amendments is attached to the proposed rule change as Exhibit 3 and is available on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html.* The effective date of the Proposed Shareholders Agreement would be the later of (i) approval by DTCC common shareholders owning two-thirds of the outstanding DTCC common shares and (ii) approval by the Commission of the proposed rule change and similar proposed rule changes being submitted by NSCC and FICC.

[5] In connection with the 1999 integration of DTC and NSCC and formation of DTCC, the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD''), the then coowners of NSCC, each received 10,000 DTCC preferred shares in exchange for their NSCC common stock. DTCC preferred shareholders have no right to vote on any matters submitted to a vote of DTC shareholders except that each of the two DTCC preferred shareholders are entitled to elect one director. DTCC preferred shareholders have no right to receive any dividends. In the event of any liquidation, dissolution or winding up of the affairs of DTCC, DTCC preferred shareholders are entitled to a liquidation preference of $300 per share of DTCC preferred stock.

believes that these proposed rule changes and the proposed amendments to the Current Shareholders Agreement will guarantee that Participants continue to govern and control the activities of DTC, NSCC, and FICC, including the kinds and quality of services provided and the service fees charged. In particular, Participants will be in a position to assure that DTC, NSCC, and FICC continue the practices of establishing fees that are cost-based and use-based and of returning to Participants in the form of cash rebates or discounts revenues in excess of expenses and necessary reserves. Finally, because they introduce the greatest risks to the clearing agencies and obtain the greatest benefits from clearing agency services, it is appropriate to require those Participants making full use of the services of DTC, NSCC, or FICC to contribute to DTCC's capital through the purchase of its common shares.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [6] and the rules and regulations thereunder applicable to DTC because DTC believes the proposed changes to the Current Shareholders Agreement will assure fair representation of DTC's participants in the selection of DTC's directors and the administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2005–16 in 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-DTC–2005–16. 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 such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site, *http://www.dtc.org/impNtc/mor/index.html.* 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–DTC–2005–16 and should be submitted on or before November 21, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5999 Filed 10–28–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52663; File No. SR–FICC–2005–19]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Require Members To Purchase Shares of the Common Stock of The Depository Trust & Clearing Corporation

October 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] notice is hereby given that on October 4, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the rules of FICC to require that certain members of FICC purchase shares of common stock of The Depository Trust & Clearing Corporation (''DTCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) DTCC is a holding company for three registered clearing agencies: FICC, The Depository Trust Company (''DTC''), and the National Securities Clearing Corporation (''NSCC''). Pursuant to DTCC's current Shareholders Agreement (''Current Shareholders Agreement''), substantially all members and participants of DTC, NSCC, and FICC (''Participants'') are entitled but are not required to purchase DTCC common shares. Participants are allocated an entitlement to purchase DTCC common shares on the basis of their relative use of the services of DTC, NSCC, and FICC. As of the last periodic allocation of share entitlements in 2003, approximately 1,100 Participants had a right to purchase DTCC common shares; however, only 190 Participants currently own any DTCC common shares and of these only 86 own DTCC common shares up to the full amounts of their share entitlements.

DTCC is currently soliciting the consent of its common shareholders to amend the Current Shareholders Agreement pursuant to which Participants of DTC, NSCC, and FICC that make full use of the services of one or more of these clearing agency subsidiaries of DTCC would be required to purchase DTCC common shares (''Mandatory Purchaser Participants'') [3] in accordance with the terms of the Current Shareholders Agreement while preserving the right but not the obligation of other Participants that make only limited use of their services to purchase DTCC common shares (''Voluntary Purchaser Participants'').[4]

Holders of DTCC common shares are entitled to elect all of the directors of DTCC other than two directors that DTCC preferred shareholders are entitled to elect.[5] DTCC common shareholders are entitled to vote on all other matters submitted to a vote of DTCC shareholders, and each DTCC common shareholder is entitled to one vote per DTCC common share. DTCC common shareholders are entitled to cumulate their votes for the election of directors. In addition, DTCC common shareholders are entitled to receive, when and if declared by the Board of Directors of DTCC, out of assets of DTCC dividends payable in cash or stock or otherwise. However, since DTC, NSCC, and FICC provide their services to their Participants on a cost-basis with revenues in excess of expenses and necessary reserves rebated or on a discounted basis, as a matter of policy and practice DTCC does not pay any dividends on DTCC common shares. The proposed amendments to the Current Shareholders Agreement will have no effect on these rights of DTCC common shareholders and preferred shareholders.

Pursuant to certain covenants in the Current Shareholders Agreement, a person elected a director of DTCC also serves as a director of each of DTC, NSCC, and FICC. The proposed changes in the Current Shareholders Agreement will have no effect on these covenants.

The system for allocating entitlements to purchase shares, which was incorporated into the Current Shareholders Agreement, was first implemented by DTC with respect to DTC common shares in 1973. At that time, the banks that were users of DTC's services purchased their DTC common shares directly but for logistical and other reasons the NYSE, the NASD and the American Stock Exchange (''AMEX'') (collectively, the ''Self-Regulatory Organizations'') purchased the DTC common shares allocated to the broker-dealers that were members of the Self-Regulatory Organizations and users of the services of DTC. It was anticipated that over time as broker-dealers exercised their right to purchase DTC common shares, the number of DTC common shares held by broker-dealers directly would increase and the number of DTC common shares held by the Self-Regulatory Organizations would correspondingly decrease, potentially to zero, since the share entitlements of the Self-Regulatory Organizations were a function of the unexercised share entitlements of their members.

The Self-Regulatory Organizations, notwithstanding the passage of time and the opportunity afforded their members to purchase DTCC common shares, continue to hold a significant block of DTCC common shares. NYSE holds approximately 29% of the outstanding DTCC common shares, and the NASD and the AMEX each holds approximately 3.7%. Accordingly, a total of approximately 36.4% of the outstanding DTCC common shares are not held by Participants but rather are held in a representative capacity by the Self-Regulatory Organizations for broker-dealer Participants which have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. It is also the case that a significant number of Participants other than broker-dealers have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. Ownership of DTCC common shares (and previously ownership of DTC common shares) is not a financial investment but instead is a vehicle for supporting each registered clearing agency and influencing its policies and operations through the election of directors.

By providing that all DTCC common shares are owned by Participants, FICC believes that these proposed rule changes and the proposed amendments to the Current Shareholders Agreement will guarantee that Participants continue to govern and control the activities of DTC, NSCC, and FICC, including the kinds and quality of services provided and the service fees charged. In particular, Participants will be in a position to assure that DTC, NSCC, and FICC continue the practices of establishing fees that are cost-based and use-based and of returning to Participants in the form of cash rebates or discounts revenues in excess of expenses and necessary reserves. Finally, because they introduce the greatest risks to the clearing agencies and obtain the greatest benefits from clearing agency services, it is appropriate to require those Participants making full use of the services of DTC, NSCC, or FICC to contribute to DTCC's capital through the purchase of its common shares.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [6]

[3] Under the Proposed Shareholders Agreement, a Mandatory Purchaser Participant that is a Participant in more than one clearing agency will be required to purchase DTCC common shares based upon its relative use of the services of all clearing agencies of which it is a Participant.

[4] The proposed DTCC Shareholders Agreement (''Proposed Shareholders Agreement'') marked to show the proposed amendments is attached to the proposed rule change as Exhibit 3 and is available on FICC's Web site at *http://www.ficc.com.* The effective date of the Proposed Shareholders Agreement would be the later of (i) approval by DTCC common shareholders owning two-thirds of the outstanding DTCC common shares and (ii) approval by the Commission of the proposed rule change and similar proposed rule changes being submitted by DTC and NSCC.

[5] In connection with the 1999 integration of DTC and NSCC and formation of DTCC, the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD''), the then coowners of NSCC, each received 10,000 DTCC preferred shares in exchange for their NSCC common stock. DTCC preferred shareholders have no right to vote on any matters submitted to a vote of DTCC shareholders except that each of the two DTCC preferred shareholders are entitled to elect one director. DTCC preferred shareholders have no right to receive any dividends. In the event of any liquidation, dissolution or winding up of the affairs of DTCC, DTCC preferred shareholders are entitled to a liquidation preference of $300 per share of DTCC preferred stock.

[6] 15 U.S.C. 78q–1.

and the rules and regulations thereunder applicable to FICC because FICC believes the proposed changes to the Current Shareholders Agreement will assure fair representation of FICC's members in the selection of FICC's directors and the administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2005–19 in 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–FICC–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 such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site, *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 SR–FICC–2005–19 and should be submitted on or before November 21, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52654; File No. SR–FICC–2005–16]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Maturity Periods Set Forth in Margin Factor Tables

October 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 19, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is making a technical change to the rules of its Government Securities Division (''GSD'') to clarify the remaining maturity periods set forth in its margin factor tables.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The GSD uses its margin factor tables to assign haircuts and offsets on member net settlement positions based on a security's remaining maturity period. The GSD's current clearing fund application properly takes into account the when-issued period of each security with respect to remaining maturity periods. However, this is not clearly reflected in the margin factor tables in the rules.[4] GSD is amending its margin

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] This clarification also necessitates a similar technical change to Appendix B in each of FICC's cross-margining agreements.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] During the one to two week period between the time a new Treasury note or bond issue is auctioned and the time the securities sold are issued, securities that have been auctioned but not yet issued trade actively on a when-issued basis. They also trade when-issued during the period between the announcement and the auction. The changes to the margin factor tables are designed to account for the when-issued period. For example, on July 24 the Treasury may announce the issuance of a two-year note to be issued on July 31. FICC members may trade the security during the time period between July 24 and July 31. Though the appropriate maturity period for assigning haircuts and offsets for this two-year note should be ''1 year + 1 day to 2 years,'' the note would fall into the ''2 years + 1 day to 4 years'' category if the remaining maturity were measured from the

Continued

factor tables by adding 15 days to each remaining maturity category to reflect current practice and avoid confusion to members.[5] GSD also is making the same technical changes to its cross-margining agreements.[6]

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to FICC because it enables FICC to amend its margin factor tables to reflect the current practice of factoring in the when-issued date of securities with respect to assigning remaining maturity periods. As such, the rule facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4)[9] thereunder because the rule effects a change in an existing service that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2005–16 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–FICC–2005–16. 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 such filings 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 SR–FICC–2005–16 and should be submitted on or before November 21, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

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beginning of when-issued trading. A footnote in the current margin factor tables, which reads ''As regards a Forward Net Settlement Position, remaining maturity is measured from the date of issuance of the Eligible Netting Securities that underlie the Position,'' clarifies that remaining maturity periods are to be measured from the date of issuance. The GSD is proposing to delete this footnote and reflect the proper starting point for measuring remaining maturity periods in each margin factor table.

[5] FICC has vetted the length of time between announcement and issue date and has determined that no when-issued period lasted longer than 15 days.

[6] The amendment to Appendix B of the FICC—The Clearing Corporation cross-margining agreement also requires a technical change to the maturity ranges of Offset classes ''e'' and ''f'' to reflect actual practice.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52658; File No. SR–NASD–2005–046]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.: Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Amending the Arbitration Fees Applicable to Certain Statutory Employment Discrimination Claims

October 24, 2005.

I. Introduction

On April 8, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change relating to arbitration fees applicable to certain statutory employment discrimination claims. On April 25, 2005, NASD filed Amendment No. 1 (''Amendment No. 1'') to the proposed rule change.[1] On June 23, 2005, NASD filed Amendment No. 2 (''Amendment No. 2'') to the proposed rule change.[2] The proposed rule change was published for comment in the **Federal Register** on June 30, 2005.[3] The Commission received three comments on the proposal, as amended.[4] For the reasons discussed below, the

[1] Amendment No. 1 replaces the original rule filing in its entirety.

[2] *See* Amendment No. 2. Amendment No. 2 clarified certain aspects of the rule text.

[3] Securities Exchange Act Release No. 51921 (June 24, 2005), 70 FR 37887 (June 30, 2005) (The ''Notice'').

[4] *See* letter to Jonathan Katz, dated July 21, 2005, by Richard P. Ryder, President, Securities Arbitration Commentator, Inc. (''Ryder Letter''); letter to Jonathan Katz, dated July 21, 2005, by Steven B. Caruso, P.C., Maddox Hargett & Caruso (''Caruso Letter''); letter to Jonathan Katz, dated July 26, 2005, by Rosemary J. Shockman, President Public Investors Arbitration Bar Association (''Shockman Letter'').

Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Description of the Proposal

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 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. Instead, 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.[5] The United States Supreme Court considered the issue of fees in connection with the arbitration of Federal statutory claims in 2000.[6] 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.'' [7]

In light of the case law, and in order to ensure that associated persons who have statutory employment discrimination claims are able to effectively vindicate such claims, the proposed rule change revised the arbitration fees applicable to certain statutory employment discrimination claims.[8] Specifically, the proposed rule change provided that 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.[9] The member that 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.[10] 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.

B. Comment Summary

The proposal was published for comment in the **Federal Register** on June 30, 2005.[11] We received three comments on the proposal.[12] Two commenters believed that the treatment accorded to employees with statutory discrimination claims should be extended to customer claims.[13] One of these commenters stated that as there are significantly more customers than there are associated persons, the NASD should expand the fee relief to customer claims, and stated that the NASD had not justified its determination to treat associated persons more favorably than customers.[14] One commenter expressed concern that arbitration fees are higher than fees in court proceedings, discouraging arbitration claims, and stated that arbitration should be equally accessible to customers as to employees.[15] This commenter did not believe that the NASD had sufficiently justified its decision to provide fee relief for statutory employment

[5] 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 Lane Corp.,* 500 U.S. 20, 28, (1991) (citing *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 637 (1995)). 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. 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. *Cole* v. *Burns International Security Services, et al.,* 105 F.3d 1465 (D.C. Cir 1997) (''*Cole* v. *Burns*''). 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.'' *Id.* at 1484. 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. *William* v. *Cigna Financial Advisory Inc.,* 197 F.3d 752, 763–64 (5th Cir. 1999) (citing *Gilmer* v. *Interstate/Johnson Lane Corp.,* 500 U.S. 20 (1991)).

[6] *Green Tree Finance Corp. of Alabama* v. *Randolph,* 531 U.S. 79 (2000) (''*Green Tree*'').

[7] *Id.* at 92.

[8] 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 parties agree to do so).

[9] 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 sessions 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 would pay a $50 filing fee, while the filing fee for a $4 million claim would be $200.

[10] 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.

[11] *See* Note 3, *supra.*

[12] *See* Note 4, *supra.*

[13] *See* Caruso Letter, Shockman Letter.

[14] *See* Caruso Letter.

[15] *See* Shockman Letter.

discrimination claims but not customer claims, and believed that fee relief for customer claims was necessary for vindication of customers' rights. The commenter cited the fee-relief rules of other arbitration associations in support of the argument that such fee relief was appropriate.

One commenter was concerned that charging the broker-dealer ''virtually all'' the fees for a statutory discrimination claim would create distortions in the process, lengthening and encouraging dissatisfaction with the process and providing incentives to bring a weak discrimination claim.[16] This commenter believed that assessing attorneys' fees for frivolous claims would not have any deterrent effect, and also believed that weak discrimination claims would be dismissed and the dismissal would be inappropriately blamed on arbitrator bias. Citing *LaPrade* v. *Kidder Peabody* (''*LaPrade*''),[17] the commenter expressed disagreement with the NASD's decision to shift the greater part of the forum fees to the employer, and criticized the NASD's reliance on and interpretation of *Cole* v. *Burns* and *Green Tree.* The commenter stated that the rationale for fee-shifting in these court cases could not be limited to fee-shifting in statutory employment discrimination claims, and expressed concern that the proposed rule change would accelerate demand for fee-shifting across all arbitrations. The commenter believed that an occasional waiver rather than a blanket exemption would be preferable.

NASD responded to the commenters by observing that the proposed rule change was intended to be very limited in scope, only addressing situations in which an employee must enter into a predispute arbitration agreement for statutory employment discrimination claims, specifically the issue addressed in *Cole* v. *Burns.* NASD stated that such claims form a very small percentage of the total number of claims filed with NASD. NASD also stated that it neither intended nor believes that there is a compelling reason for the proposed fee changes to be applied to all statutory securities claims brought by customers. Furthermore, NASD stated that it does not believe that the arbitration process will be impaired by the change because arbitrators will be able to identify and dispose of frivolous or marginal claims, as well as allocate costs and attorneys' fees. Lastly, NASD stated that it believes that waivers, rather than uniform fee-shifting, will introduce significant delays and uncertainty to the arbitration process.

In connection with one commenter's[18] objection to the fee-shifts, NASD noted that NASD is the only forum for statutory employment discrimination claims based on presdispute arbitration agreements. In this context, NASD stated that it believes that it is ''fair and reasonable for members, who require their employees to enter into predispute arbitration agreements, to pay additional filing and forum fees for this service.''

III. Discussion and Findings

The Commission finds the proposed rule change is consistent with the Act, and in particular with Sections 15A(b)(5)[19] of the Act, which requires that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls. The Commission believes that the proposed rule change is consistent with the provisions of the Act noted above because it will permit employees subject to predispute arbitration agreements to vindicate statutory employment discrimination claims without significant financial barriers to adjudication.

We do not believe that NASD is required, in connection with this proposal, which addresses a limited number of statutory employment discrimination claims, to expand the fee relief in the proposal to fees for statutory securities claims brought by customers. The NASD's proposal deals with an extremely limited set of claims brought in its arbitration forums. The NASD states that in each of the last five years, statutory employment discrimination claims accounted for less than one percent of all claims filed with NASD. In connection with providing a forum for arbitration of such claims, the NASD has determined to provide fee relief consistent with *Cole* v. *Burns, which was concerned with the accessibility of the adjudicatory system to a claimant subject to a predispute arbitration agreement in a statutory employment discrimination claim. We note that Cole* v. *Burns* provides justification for the fee relief, and would not require expansion of fee relief into other statutory securities claims. In this context, we agree with NASD's rationale for limiting the proposed fee reduction to statutory employment discrimination claims based on predispute agreements.

With regard to the proposed rule change's determination to shift certain fees to employers, we note particularly that NASD provides the only forum for employers in which such claims can be adjudicated, and that very few of the claims adjudicated by NASD's arbitration system involve statutory employment discrimination claims. *LaPrade,* the case cited by the commenter for the proposition that *Cole* v. *Burns* does not bar the assessment of all forum fees against the claimant, does not preclude NASD from determining that it will assess certain fees against an employer in this extremely limited number of cases. Further, given the extremely limited number of these cases adjudicated by the NASD, automatic fee-shifting for employment discrimination claims based on predispute agreements should not pose a significant hardship to employers. We agree with the NASD's position that requiring a waiver analysis of every case involving statutory employment discrimination claims would most likely introduce significant delays, complexity and uncertainty to the arbitration process.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[20] that the proposed rule change (SR–NASD–2005–046) be, and hereby is, approved.[21]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5991 Filed 10–28–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52664; File No. SR–NSCC–2005–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Require Members To Purchase Shares of the Common Stock of The Depository Trust & Clearing Corporation

October 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[16] *See* Ryder Letter.

[17] 246 F.3d 702 (DC Cir., 2001) (holding that *Cole* v. *Burns* does not preclude an arbitrator from assessing certain fees against a claimant.

[18] *See* Ryder Letter.

[19] 15 U.S.C. 78*o*–3(b)(5).

[20] 15 U.S.C. 78s(b)(2).

[21] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

(''Act''),[1] notice is hereby given that on October 4, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the rules of NSCC to require that members of NSCC other than Mutual Fund/Insurance Services Members purchase shares of common stock of The Depository Trust & Clearing Corporation (''DTCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) DTCC is a holding company for three registered clearing agencies: NSCC, The Depository Trust Company (''DTC''), and the Fixed Income Clearing Corporation (''FICC''). Pursuant to DTCC's current Shareholders Agreement (''Current Shareholders Agreement''), substantially all members and participants of DTC, NSCC, and FICC (''Participants'') are entitled but are not required to purchase DTCC common shares. Participants are allocated an entitlement to purchase DTCC common shares on the basis of their relative use of the services of DTC, NSCC, and FICC. As of the last periodic allocation of share entitlements in 2003, approximately 1,100 Participants had a right to purchase DTCC common shares; however, only 190 Participants currently own any DTCC common shares and of these only 86 own DTCC common shares up to the full amounts of their share entitlements.

DTCC is currently soliciting the consent of its common shareholders to amend the Current Shareholders Agreement pursuant to which Participants of DTC, NSCC, and FICC that make full use of the services of one or more of these clearing agency subsidiaries of DTCC would be required to purchase DTCC common shares (''Mandatory Purchaser Participants'')[3] in accordance with the terms of the Current Shareholders Agreement while preserving the right but not the obligation of other Participants that make only limited use of their services to purchase DTCC common shares (''Voluntary Purchaser Participants'').[4]

Holders of DTCC common shares are entitled to elect all of the directors of DTCC other than two directors that DTCC preferred shareholders are entitled to elect.[5] DTCC common shareholders are entitled to vote on all other matters submitted to a vote of DTCC shareholders, and each DTCC common shareholder is entitled to one vote per DTCC common share. DTCC common shareholders are entitled to cumulate their votes for the election of directors. In addition, DTCC common shareholders are entitled to receive, when and if declared by the Board of Directors of DTCC, out of assets of DTCC dividends payable in cash or stock or otherwise. However, since DTC, NSCC, and FICC provide their services to their Participants on a cost-basis with revenues in excess of expenses and necessary reserves rebated or on a discounted basis, as a matter of policy and practice DTCC does not pay any dividends on DTCC common shares. The proposed amendments to the Current Shareholders Agreement will have no effect on these rights of DTCC common shareholders and preferred shareholders.

Pursuant to certain covenants in the Current Shareholders Agreement, a person elected a director of DTCC also serves as a director of each of DTC, NSCC, and FICC. The proposed changes in the Current Shareholders Agreement will have no effect on these covenants.

The system for allocating entitlements to purchase shares, which was incorporated into the Current Shareholders Agreement, was first implemented by DTC with respect to DTC common shares in 1973. At that time, the banks that were users of DTC's services purchased their DTC common shares directly but for logistical and other reasons the NYSE, the NASD and the American Stock Exchange (''AMEX'') (collectively, the ''Self-Regulatory Organizations'') purchased the DTC common shares allocated to the broker-dealers that were members of the Self-Regulatory Organizations and users of the services of DTC. It was anticipated that over time as broker-dealers exercised their right to purchase DTC common shares, the number of DTC common shares held by broker-dealers directly would increase and the number of DTC common shares held by the Self-Regulatory Organizations would correspondingly decrease, potentially to zero, since the share entitlements of the Self-Regulatory Organizations were a function of the unexercised share entitlements of their members.

The Self-Regulatory Organizations, notwithstanding the passage of time and the opportunity afforded their members to purchase DTCC common shares, continue to hold a significant block of DTCC common shares. NYSE holds approximately 29% of the outstanding DTCC common shares, and the NASD and the AMEX each holds approximately 3.7%. Accordingly, a total of approximately 36.4% of the outstanding DTCC common shares are not held by Participants but rather are held in a representative capacity by the Self-Regulatory Organizations for broker-dealer Participants which have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. It is also the case that a significant number of

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Under the proposed Shareholders Agreement, a Mandatory Purchaser Participant that is a Participant in more than one clearing agency will be required to purchase DTCC common shares based upon its relative use of the services of all clearing agencies of which it is a Participant.

[4] The proposed DTCC Shareholders Agreement (''Proposed Shareholders Agreement'') marked to show the proposed amendments is attchaed to the propose rule change as Exhibit 3 and is available on NSCC's Web site at *http://www.nscc.com/legal.* The effective date of the Proposed Shareholders Agreement would be the later of (i) approval by DTCC common shareholders owning two-thirds of the outstanding DTCC common shares and (ii) approval by the Commission of the proposed rule change and similar proposed rule changes being submitted by DTC and FICC.

[5] In connection with the 1999 integration of DTC and NSCC and formation of DTCC, the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD''), the then owners of NSCC, each received 10,000 DTCC preferred shares in exchange for their NSCC common stock. DTCC preferred shareholders have no right to vote on any matters submitted to a vote of DTCC shareholders except that each of the two DTCC preferred shareholders are entitled to elect one director. DTCC preferred shareholders have no right to vote on any matters submitted to a vote of DTCC shareholders except that each of the two DTCC preferred shareholders are entitled to elect one director. DTCC preferred shareholders have no right to receive any dividends. In the event of any liquidation, dissolution or winding up of the affairs of DTCC, DTCC preferred shareholders are entitled to a liquidation preference of $300 per share of DTCC preferred stock.

Participants other than broker-dealers have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. Ownership of DTCC common shares (and previously ownership of DTC common shares) is not a financial investment but instead is a vehicle for supporting each registered clearing agency and influencing its policies and operations through the election of directors.

By providing that all DTCC common shares are owned by Participants, NSCC believes that these proposed rule changes and the proposed amendments to the Current Shareholders Agreement will guarantee that Participants continue to govern and control the activities of DTC, NSCC, and FICC, including the kinds and quality of services provided and the service fees charged. In particular, Participants will be in a position to assure that DTC, NSCC, and FICC continue the practices of establishing fees that are cost-based and use-based and of returning to Participants in the form of cash rebates or discounts revenues in excess of expenses and necessary reserves. Finally, because they introduce the greatest risks to the clearing agencies and obtain the greatest benefits from clearing agency services, it is appropriate to require those Participants making full use of the services of DTC, NSCC, or FICC to contribute to DTCC's capital through the purchase of its common shares.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to NSCC because NSCC believes the proposed changes to the Current Shareholders Agreement will assure fair representation of NSCC's members in the selection of NSCC's directors and the administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[6] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2005–14 in 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–NSCC–2005–14. 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 such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.nscc.com\legal.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2005–14 and should be submitted on or before November 21, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5990 Filed 10–28–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52666; File No. SR–Phlx–2005–60]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Payment for Order Flow Program in Effect in September and October 2004

October 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to rebate payment for order flow funds that were collected from Registered Options Traders (''ROTs''), but not requested by

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

specialists in connection with the Exchange's payment for order flow program that was in effect in September and October 2004 (''September/October 2004'').

Background

In September/October 2004, the Exchange assessed a payment for order flow fee as follows when ROTs traded against a customer order: (1) $1.00 per contract for options on the Nasdaq-100 Index Tracking Stock℠ traded under the symbol QQQQ; [5] and (2) $0.40 per contract for the remaining top 150 equity options, other than the QQQQs.[6] The Exchange states that, pursuant to the Exchange's September/October 2004 payment for order flow program, any excess payment for order flow funds (funds not requested by specialists to pay for order flow) were carried forward to the next month by option and could not be applied retroactively to past deficits, which may be incurred when a specialist requested more than the amount billed and collected. Thus, ROTs did not receive a rebate of any excess payment for order flow funds in a particular option pursuant to the September/October 2004 payment for order flow program.

In November 2004, the Exchange modified its payment for order flow program to allow, among other things, any excess payment for order flow funds billed but not reimbursed to specialists to be returned to ROTs, by option, on a pro rata basis.[7] However, the Exchange states that the rebates only applied to transactions settling on or after November 1, 2004 and therefore, did not include any excess funds from the September/October payment for order flow program because, at that time, it did not know whether there would be any excess payment for order flow funds due to the specialist reimbursement process then in effect.

The specialist reimbursement process has been completed and the Exchange now proposes to rebate to ROTs on a pro rata basis those payment for order flow funds collected, but not reimbursed to specialists in connection with the September/October 2004 payment for order flow program

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 Phlx 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 Phlx 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 states that the purpose of returning excess payment for order flow funds to ROTs on a pro rata basis is to help minimize the financial impact to them in connection with the collection of the September/October 2004 payment for order flow fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Sections 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among the Phlx's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–Phlx–2005–60 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–Phlx–2005–60. 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

[5] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. The Exchange states that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[6] *See* Securities Exchange Act Release Nos. 50471 (September 29, 2004), 69 FR 59636 (October 5, 2004) (SR–Phlx–2004–60) and 50572 (October 20, 2004), 69 FR 62735 (October 27, 2004) (SR–Phlx–2004–61).

[7] *See* Securities Exchange Act Release No. 50723 (November 23, 2004), 69 FR 69978 (December 1, 2004) (SR–Phlx–2004–68).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2005–60 and should be submitted on or before November 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6002 Filed 10–28–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

National Advisory Council Public Meeting

The U.S. Small Business Administration, Office of the National Advisory Council will be hosting a public meeting via conference call to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, or interested others. The conference call will take place on Monday, November 21, 2005, at 3 p.m. eastern standard time. The call in number is 1–866–740–1260. To join, enter access code 3711001 at the prompt.

Additionally, we will be using *http://www.readytalk.com* to offer a PowerPoint presentation. After logging onto the Web page, the access code is the same 3711001. Please log-in 5 minutes prior to the conference.

Anyone wishing to participate or make an oral presentation to the Board must contact Balbina Caldwell, Director, National Advisory Council, no later than Friday, November 18, 2005, via e-mail: *balbina.caldwell@sba.gov*; or phone: (202) 205–6914.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–21599 Filed 10–28–05; 8:45 am]

BILLING CODE 8025–01–P

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing Region VI Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region VI Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, November 10, 2005, at 9 a.m. The meeting will take place at the State Capitol, Old Supreme Court Room, Fifth and Woodlane, Little Rock, AR to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Carol Silverstrom, in writing or by fax, in order to be put on the agenda. Carol Silverstrom, Public Information Officer, SBA, Arkansas District Office, 2120 Riverfront Drive Suite 250, Little Rock, AR 72202–1796, phone (501) 324–7379 Ext. 227, fax (501) 324–7395, e-mail: *Carol.silverstrom@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–21600 Filed 10–28–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5168]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 8, 2005, in Washington, DC. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b [c][4], it has been determined the meeting will be closed to the public. The meeting will involve the discussion and examination of corporate policies and procedures involving proprietary commercial and financial information that is considered privileged and confidential. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector physical and procedural security policies and protective programs and the protection of U.S. business information overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 4, 2005.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 05–21727 Filed 10–28–05; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2005–22752]

Notice of Request for Information Collection Approval

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et. seq.*) this notice announces the Department of Transportation's (DOT) intention to utilize 10 forms when processing Equal Employment Opportunity (EEO) discrimination complaints filed by applicants for employment with the Department.

DATES: Comments on this notice must be received by December 30, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2005–22752] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instruction 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 on Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailing 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 Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Caffin Gordon, Chief, Compliance Operations Division, S–34, Department Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Wahington, DC 20590, (202) 366–9370 or (TTY) 202–366–0663.

SUPPLEMENTARY INFORMATION:

Form Titles: (1) Equal Employment Opportunity Counselor Checklist; (2) ONE DOT Sharing Neutrals Program—Mediation Intake; (3) Agreement to Mediate; (4) Exit Survey for Mediation Participants; (5) Agreement to Postpone the Final Interview and to Extend the Counseling Period; (6) Notice of Right to File a Discrimination Complaint; (7) Notice of Rights and Responsibilities; (8) Individual Complaint of Employment Discrimination; (9) Designation of Representative; and (10) Final Agency Decision Request.

OMB Control Numbers: Initial Request.

Type of Request: New Collection.

Abstract: DOT will utilize ten forms to collect information necessary to process EEO discrimination complaints filed by individuals who are not Federal employees and are applicants for employment with the Department. These complaints are processed in accordance with the Equal Employment Opportunity Commission's regulations, 29 CFR part 1614, as amended. DOT will use the forms to: (a) Ensure that the DOT EEO Counselor explains to the complainant his/her rights and responsibilities; (b) communicate the complainant's request to participate in the Department's alternative resolution process; (c) document complainant's agreement to mediate; (d) complete exit survey for mediation participants; (e) document the complainant agreement to extend EEO counseling for up to an additional 60 days; (f) inform complainant of his/her right to file an EEO discrimination complaint; (g) provide the complainant with a written notice of his/her rights and responsibilities; (h) request requisite information from the applicant for processing his/her EEO employment discrimination complaint; and (i) obtain information to identify an individual or his or her attorney or other representative, if appropriate; and (j) communicate a complainant's request for a final agency decision concerning his/her complaint. An applicant's filing of an EEO employment complaint is solely voluntary. DOT estimates that it takes an applicant approximately 1.58 hours to complete all ten forms.

Respondents: Job Applicants filing EEO employment discrimination complaints.

Estimated Number of Respondents: 10 per year.

Estimated Total Burden on Respondents: 15.8 hours per year.

Comments are invited on: (a) Whether the proposed collection of information is reasonable for the proper performance of the EEO functions of the Department, and (b) the accuracy of the Department's estimate of the burden of the proposed information collection. All responses to the notice will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Issued in Washington, DC on October 18, 2005.

J. Michael Trujillo,

Director, Departmental Office of Civil Rights.

[FR Doc. 05–21382 Filed 10–28–05; 8:45am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Notice of Receipt of Petition for Decision that Nonconforming 1999–2005 Ducati ST4s Motorcycles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1999–2005 Ducati ST4s motorcycles are eligible for importation.

SUMMARY: This doclument announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999–2005 Ducati ST4s motorcylces that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 30, 2005.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.] 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.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS of Aberdeen, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether non-U.S. certified 1999–2005 Ducati ST4s motorcycles are eligible for importation into the United States. The vehicles that US SPECS believes are

substantially similar are 1999–2005 Ducati ST4s motorcycles that were manufactured for importation into and sale in the United States and were certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 1999–2005 Ducati ST4s motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2005 Ducati ST4s motorcycles, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999–2005 Ducati ST4s motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: inspection of all vehicles and replacement of the following with U.S.-model components on vehicles not already so equipped: (a) Headlamps; (b) tail lamps: (c) front and rear turn signal lamps; and (d) front and rear side-mounted reflex reflectors.

Standard No. 111 *Rearview Mirrors:* installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* (a) installation of a tire information placard; and (b) inspection of all vehicles to ensure compliance with rim marking requirements, and replacement of rims that are not properly marked with U.S.-model rims.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer, or modification of the speedometer so that it reads in miles per hour.

Standard No. 205 *Glazing Materials:* inspection of all vehicles, and removal of noncompliant glazing or replacement of the glazing with U.S.-model components on vehicles that are not already so equipped.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–21581 Filed 10–28–05; 8:45 am]

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15 Parts:			
0–299	(869–056–00045–6)	40.00	Jan. 1, 2005
300–799	(869–056–00046–4)	60.00	Jan. 1, 2005
800–End	(869–056–00047–2)	42.00	Jan. 1, 2005
16 Parts:			
0–999	(869–056–00048–1)	50.00	Jan. 1, 2005
1000–End	(869–056–00049–9)	60.00	Jan. 1, 2005
17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
200–239	(869–056–00052–9)	58.00	Apr. 1, 2005
240–End	(869–056–00053–7)	62.00	Apr. 1, 2005
18 Parts:			
1–399	(869–056–00054–5)	62.00	Apr. 1, 2005
400–End	(869–056–00055–3)	26.00	[9] Apr. 1, 2005
19 Parts:			
1–140	(869–056–00056–1)	61.00	Apr. 1, 2005
141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–056–00058–8)	31.00	Apr. 1, 2005
20 Parts:			
1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–056–00060–0)	64.00	Apr. 1, 2005
500–End	(869–056–00061–8)	63.00	Apr. 1, 2005
21 Parts:			
1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–056–00069–3)	58.00	Apr. 1, 2005
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–056–00071–5)	63.00	Apr. 1, 2005
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
*63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
*63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.