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

WHEN: Wednesday, November 30, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206–AK 71

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Sanctions Compliance Certification

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation for the Combined Federal Campaign (CFC). This regulation requires that each federation and unaffiliated organization applying to participate in the CFC must, as a condition of participation, certify that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities, and individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).

DATES: This rule is effective November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mark W. Lambert, Senior Compliance Officer for the Office of CFC Operations, by telephone on (202) 606–2564, by FAX on (202) 606–0902, or by e-mail at *cfc@opm.gov.*

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

As a condition of participating in the 2005 CFC, OPM required organizations to certify that they do not knowingly employ individuals, or contribute funds to entities or persons, on either the Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals List or the Terrorist Exclusion List. OPM's Office of CFC Operations issued guidance on compliance with that certification, CFC Memorandum 2004–12, which described the rationale for the certification and set forth instructions for checking these lists.

On March 29, 2005, OPM issued a Notice of Proposed Rulemaking (70 FR 15783 (March 29, 2005)) (NPRM) to modify the certification. The proposed rule governs the solicitation of Federal civilian and uniformed services personnel at the workplace for contributions to private non-profit organizations through the CFC under the authority of Executive Order 12353 (March 23, 1982). OPM has plenary authority under 5 CFR part 950 to administer the CFC in compliance with legal standards.

As explained in the NPRM, the proposed regulation requires that each federation and unaffiliated organization applying to participate in the CFC must, as a condition of participation, certify that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities, and individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).

OFAC is the office principally responsible for administering and enforcing U.S. economic sanctions programs imposed pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and other authorities. These programs further U.S. foreign policy and national security goals and are directed primarily against foreign states and nationals, including sponsors of global terrorism and foreign narcotics traffickers. OFAC acts, pursuant to delegated authority, under Presidential wartime and peacetime national emergency powers. The programs administered by OFAC restrict or prohibit U.S. persons from engaging in transactions and dealings with targeted countries, entities, and individuals. OFAC publishes a list of Specially Designated Nationals and Blocked Persons (SDN List). The persons on the SDN List are subject to economic sanctions. The SDN List and additional information relating to the economic sanctions programs that OFAC administers are available at *http://www.treas.gov/ofac.* A link to the SDN List is available on the CFC Web site (*http://www.opm.gov/cfc*).

The vulnerability of the charitable sector to abuse by terrorists and others underscores the importance of due diligence within the charitable sector. For example, between October 2001 and December 2004, the United States: (i) Imposed sanctions against five U.S.-based charities and thirty-five non-U.S. charities for terrorist financing activity under the authority of Executive Order 13224 (Sept. 23, 2001) and the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.*; (ii) convicted and sentenced the leader of a U.S.-based charity for racketeering and fraud owing to terrorist-related support; (iii) indicted more than one U.S.-based charity and its leadership under pending terrorist financing charges; and (iv) investigated numerous other charities operating in the U.S. that were suspected of involvement in supporting terrorist activities.

Accordingly, in order to further the purposes of the economic sanctions imposed by the President, to ensure that organizations participating in the CFC are exercising appropriate diligence, and to help safeguard the integrity of the CFC and the interests of Federal employees who contribute to the CFC, the final regulation requires that each federation, federation member, and unaffiliated organization applying to participate in the CFC must, as a condition of participation, complete the following certification:

I certify that the organization named in this application is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities, or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control. The organization named in this application is aware that a list of countries subject to such sanctions, a list of Specially Designated Nationals and Blocked Persons subject to such sanctions, and overviews and guidelines for each such sanctions program can be found at http://www.treas.gov/ofac. Should any change in circumstances pertaining to this certification occur at any time, the organization will notify OPM's Office of CFC Operations immediately.

II. Explanation of Changes

OPM received 13 written comments in response to the NPRM from: four Local Federal Coordinating Committees, which oversee local campaign activities; two Principal Combined Fund Organizations, which administer local campaigns on behalf of Federal employees; four charitable organizations that participate or have participated in the CFC; one Federal agency; one Federal employee; and one citizen. OPM has found these comments very helpful, and, in several important respects, the final rule contains revisions made in response to these comments.

In general, each of the 13 commenters believed that the certification and regulatory changes proposed in the NPRM were improvements over the 2005 certification and OPM guidance. Five of the 13 commenters voiced their concurrence with the regulatory changes and certification proposed in the NPRM.

One of the commenters wanted to know how the propositions in the NPRM would affect the American Red Cross. OPM believes that the regulatory change and certification will affect all organizations in the same manner. Each organization wishing to participate in the CFC will need to determine the steps necessary to ensure that it can accurately certify to the sanctions compliance statement in order to participate in the CFC.

Another commenter suggested clarifying the NPRM wording of 5 CFR § 950.605 to specify that federation members, as well as federations and unaffiliated organizations, must certify to the sanctions compliance statement. OPM agrees and has made the change to 5 CFR § 950.605.

One commenter recommended that we implement the proposed certification in the NPRM for the 2005 CFC. OPM disagrees with the commenter, because the certification in the NPRM was not finalized as of the application deadline for the 2005 CFC. The proposed regulation remained subject to change based on comments from stakeholders during the time period that decisions needed to be made on the eligibility of CFC applicants for the 2005 CFC.

One commenter stated that the proposed certification in the NPRM continued to contain ambiguities and recommended that OPM clarify these ambiguities prior to finalizing the regulation. The primary concern of the commenter was that it was not clear what an organization must do to be compliant and whether or not checking government sanctions lists would still be mandatory, as was required by the 2005 certification and OPM guidance. The commenter asserted that if list-checking was mandatory, OPM should clarify whether CFC Memorandum 2004–12 applies in whole or in part to the proposed NPRM certification. The commenter requested that these clarifications be made prior to the adoption of the final rule, by the issuance by OPM of a second proposed rule containing the clarifications and providing the public with a chance to comment again.

Under the final rule, effective for 2006 and subsequent campaigns, OPM does not mandate that applicants check the Specially Designated Nationals (SDN) List or the Terrorist Exclusion List (TEL). Charities, however, as a minimum, should follow the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities, which is located on the OFAC Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.* Thus, even though OPM will not mandate list-checking by applicants for the 2006 and subsequent campaigns, it continues to encourage charities to check the SDN List and the TEL as a way to help ensure compliance with applicable regulations and as an important part of implementing the type of risk-based compliance program proposed by the Guidelines. It is the intention of OPM that applicants enhance their efforts to ensure that funds collected through the CFC not be used to finance unlawful activities or those who engage in them, not that such efforts be diminished. This is not a departure from prior policy. The new certification takes into account the fact that the various charities participating in the CFC operate under unique circumstances and it is ultimately their responsibility to ensure compliance with the OFAC economic sanctions programs. OPM does not believe it is necessary to issue a second proposed rule and will continue to consider feedback from stakeholders throughout the current and future campaigns.

One of the commenters recommended changes to the Supplementary Information section of the NPRM to reflect that more than one U.S. based charity and its leadership have been indicted for providing material support or resources to terrorist organizations. The commenter further requested that OPM clarify the entry that states ''(iv) investigated numerous other charities operating in the U.S. and suspected of terrorist financing activity'' to read ''(iv) investigated numerous other charities operating in the U.S. suspected of involvement in supporting terrorist activities.'' OPM agrees and made the changes to the Supplementary Information in this final regulation. The commenter also recommended a final regulation similar to the one issued and used by the United States Agency for International Aid (USAID). Although OPM reviewed and considered the regulation and guidance used by USAID, OPM believes that the proposed certification, with revisions based on public comments, more appropriately meets the needs of the CFC. USAID enters into assistance agreements with organizations and must ensure that it, as an entity, complies with the OFAC sanctions program as well as criminal statutes against providing material support to terrorist groups. As a result, USAID requires disclosure of contractors and subgrantees of its grants, as well as compliance verifications on these contractors and subgrantees. Although OPM facilitates Federal employee support for charitable recipients through the CFC, OPM does not provide direct support to organizations in the manner that USAID does, nor does OPM collect comparable information from its participating organizations. As a result, the burden of ensuring compliance with the OFAC sanctions programs properly rests with the charities that provide the charitable benefits, and that are in any event charged with compliance with OFAC sanctions programs as a matter of law. OPM does annually conduct a match of participating charities at the national level against the OFAC list and requires LFCCs to similarly conduct an annual match of local charitable organizations against the OFAC list.

One commenter objected to the last sentence in the proposed certification, stating that it implies the organization has violated the law and raises Constitutional concerns of self-incrimination. The commenter suggested that OPM revise this sentence to match the one used in the 2005 certification. While OPM intends for voluntary compliance with this regulation to include reporting instances of non-compliance, OPM agrees that the suggested language accomplishes that purpose and has made the change to the last sentence of the certification in this final regulation.

One commenter proposed that the certification should be clarified to recognize that no entity can ensure absolute compliance and to provide a standard that allows each charity to plan its individual approach to compliance. The commenter stated that by requiring a charity to state that it is in compliance, CFC puts the applicant in the potential position of having to

prove a negative: that there is no diversion of funds. The commenter cited the certification used by USAID as providing a clearer and more realistic statement: ''does not knowingly provide support or resources * * * to the best of its current knowledge.'' The commenter pointed out that the USAID guidance states that list checking may be used but is not mandatory, defines ''material support'' and clarifies what a charity must do if it believes recipients of its support are involved in terrorist acts. The commenter also proposed that the CFC provide a process for charities that discover noncompliance with the certification during the fiscal year to cure the problem without interrupting their participation in the program and that absent negligence in oversight, the CFC should not attempt to recoup donations already received when a charity comes forward to report and cure non-compliance. The commenter stated that any other approach is inherently unfair and discourages charities from coming forward to report and correct problems. Finally, the commenter suggested the removal of OPM's description of a ''pattern of abuse of U.S. and foreign charities'' included in the Supplementary Information in the NPRM. The commenter based this suggestion on a citation from a 2004 research paper, which disputed that U.S. charities were unwittingly being used to support terrorist activities.

OPM agrees with some of the comments made by this commenter and disagrees with others. As stated previously, OPM believes that this final rule will provide the required clarification and that the best practices guidance issued by the U.S. Department of the Treasury will assist charities in their compliance efforts. As explained above, OPM reviewed and considered the regulation and guidance used by USAID but believes that the proposed certification, with revisions based on public comments, more appropriately meets the needs of the CFC. In regard to the comments on charities that discover instances of non-compliance and are able to resolve them without affecting CFC participation, the proposed rule and this final regulation state that OPM ''will take steps it deems necessary.'' These steps may include the items iterated in the NPRM and in this final regulation. Historically, OPM has chosen to work with charities to correct occurrences of non-compliance with CFC regulations and will continue to do so. However, OPM recognizes that circumstances vary. Particularly with regard to this sensitive issue, it has determined that it must reserve discretion to act appropriately given unforeseen future events.

Finally, OPM opted to remove the language regarding ''a pattern of abuse'' noted in the **SUPPLEMENTARY INFORMATION** of the NPRM. While more than one U.S. based charity and its leadership have been indicted for providing material support or revenues to terrorist organizations, OPM acknowledges that there are differing views regarding this assertion. Furthermore, OPM does not intend this NPRM to be the forum for this debate.

The final commenter reiterated the comments provided by the previously described commenter, which we already have addressed in this discussion.

Waiver of Delayed Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective upon the date of publication of this notice. In accordance with established practice, OPM will begin accepting applications for the 2006 CFC on December 1, 2005. Waiting 30 days from the date of publication of this notice to make the rule effective will not provide sufficient time in advance of December 1, 2005, for the application form for the 2006 CFC to be made available to parties wishing to complete and submit the form.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Organizations applying to the CFC have an existing, independent obligation to comply with U.S. sanctions laws. Requiring them to execute a certification with respect to such compliance is not burdensome. OPM has taken steps to minimize the economic impact on small entities by including in the text of the certification the OFAC Web site address at which extensive information on U.S. sanctions is available via the internet free of charge, including the text-searchable OFAC SDN List.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employees, Military personnel, Nonprofit organizations and Reporting and recordkeeping requirements.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM amends 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

■ 1. The authority citation for part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

■ 2. In Subpart A § 950.104 add paragraph (b)(18) to read as follows:

§ 950.104 Local Federal Coordinating Committee responsibilities.

* * * * *

(b) * * *

(18) Determining whether each local federation, federation member, and unaffiliated organization that applies to participate in the local campaign has completed the sanctions compliance certification required pursuant to § 950.605. The LFCC must deny participation to any federation or organization that has not completed the sanctions compliance certification.

* * * * *

■ 3. In Subpart F, add new § 950.605 to read as follows:

§ 950.605 Sanctions compliance certification.

Each federation, federation member and unaffiliated organization applying for participation in the CFC must, as a condition of participation, complete a certification that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). Should any change in circumstances pertaining to this certification occur at any time, the organization must notify OPM's Office of CFC Operations immediately. OPM will take such steps as it deems appropriate under the circumstances, including, but not limited to, notifying OFAC and/or other enforcement authorities of such change, suspending disbursement of CFC funds not yet disbursed, retracting (to the extent practicable) CFC funds already

disbursed, and suspending or expelling the organization from the CFC.

[FR Doc. 05–22186 Filed 11–3–05; 11:13 am]
BILLING CODE 6325–46–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AH36

Extra Long Staple Cotton Prices

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim final rule published June 20, 2005 that was effective August 5, 2005, amending the Extra Long Staple (ELS) Cotton Competitiveness Payment Program of the Commodity Credit Corporation (CCC). The interim rule changed the ELS cotton price used to calculate the payment rate from the ''average domestic spot price quotation for base quality U.S. Pima cotton'' to the ''American Pima c.i.f. Northern Europe'' price. The change was made to reduce the cost to the Federal Government of operating the program by incorporating a reference price more indicative of actual ELS cotton world market prices. This final rule makes changes from the interim final rule in the prices used to calculate the payment rate from ''American Pima c.i.f. Northern Europe'' and ''c.i.f. Northern Europe'' price quotes to ''U.S. Pima C/F Far East'' and ''C/F Far East,'' respectively. This change is made in response to comments and for other reasons as discussed.

DATES: Effective November 4, 2005. The first announcement of a payment rate under the new price mechanism will be on November 10, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Neff, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0515, Washington, DC 20250–0515; Phone: (202) 720–7954; e-mail: *Steve.Neff@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

In an interim final rule published June 20, 2005 (70 FR 35367) the Commodity Credit Corporation (CCC) changed the regulations governing how payment rates are calculated under its Extra Long Staple (ELS) Cotton Competitiveness Payment Program to change the price used for the calculation from the ''average domestic spot price quotation for base quality U.S. Pima cotton,'' or ''U.S. spot quotes,'' to the ''American Pima c.i.f. Northern Europe quote.'' Before the interim rule, the ELS payment rate was the difference between U.S. spot prices, as reported by the Department of Agriculture (USDA), Agricultural Marketing Service (AMS), and the lowest foreign quote, c.i.f. Northern Europe, as published by the trade publication *Cotton Outlook,* adjusted to U.S. location and quality. This change was made because payments to ELS producers calculated using the old price had sharply increased program outlays. For example, the payment rate, which averaged a record high of 16.46 cents per pound in 2004, averaged 80.48 cents per pound for 7 weeks in February and March, 2005. Consequently, fiscal year 2005 outlays through March, 2005, normally budgeted for $50–55 million per year, exceeded $150 million.

The increase in the payment rate could be attributed principally to increases in U.S. spot market quotes. The market for ELS cotton is susceptible to price swings because it is a thin market. ELS production of 736,000 bales in 2004 was only 4 percent of total U.S. cotton production and 90 percent of ELS is produced in the San Joaquin Valley of California. The ELS market also has relatively few participants. For example, two trading companies received nearly 60 percent of the payments under this program in fiscal years 2003 and 2004. Further, growing conditions in 2004 contributed to a short supply of high-quality ELS cotton, excess moisture led to color deterioration and lower grade classification. These circumstances exposed a program weakness which allowed high prices and high payment rates to influence each other with no market-like, self-correcting mechanism. AMS collects transaction data from market participants whose payments depend on the reported prices. If a sale is made at a relatively low price, the merchant has no incentive to report that transaction. With a high payment rate in effect for a week, the merchant could bid more for existing supplies and report higher transaction prices to AMS, which led to a higher payment rate in the following week. With the higher payment rate, the merchant could source from the United States and remain competitive in international markets.

The interim final rule's intent was to reduce future payment rates by comparing foreign quotes to quotes for American Pima c.i.f. Northern Europe to determine the payment rate. American Pima c.i.f. Northern Europe was determined to be the most valid price measure for this program because it was a comparison of foreign and U.S. quotes from the same source within the same geographical area. This measure is net of the payment rate and based on the export market. FSA believed that this measure was appropriate because 90 percent of U.S.-produced ELS cotton is exported. According to our analysis, the payment rate calculated in this manner would have resulted in a payment of 20.69 cents per pound for the first week of April, about a quarter of the rate CCC actually paid.

Public Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provided that the regulations needed to implement Title I of the 2002 Act, which includes this rule, shall be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, the rule was issued as an interim final rule and was effective immediately. Nonetheless, the Agency requested and accepted public comments.

Discussion of Public Comments

Eight public comments were received. Two letters supporting the interim final rule were received from Congress—one from the Chairman of the Senate Committee on Agriculture, Nutrition & Forestry; one from the Chairman of the House Committee on Agriculture. Also, separate letters were received from two cotton industry groups, the National Cotton Council and Supima, supporting the interim rule. These groups also joined in a letter signed by five organizations recommending the shift to a Far East price quote basis discussed below.

Price Quotes Used To Calculate Payments

A comment from a U.S. cotton spinner urged the Agency to change both price quotes used to calculate payments from the ''American Pima c.i.f. Northern Europe'' adopted in the interim final rule and the foreign price quote used for comparison, ''c.i.f. Northern Europe,'' to ''U.S. Pima C/F Far East'' and ''C/F Far East,'' respectively. This change was needed, the commenter suggested, because ''very little cotton, and especially very little American Pima (ELS cotton), is

exported to Europe.'' Another comment received, a joint letter signed by the National Cotton Council, Supima, Amcot (the international sales agency of American cotton growers), the American Cotton Shippers Association, and the Western Cotton Shippers Association, also suggested that the change to a Far East basis by CCC ''would be a logical approach.''

As suggested by commenters, this rule changes CCC's regulation to a Far East price basis. FSA agrees that the ''U.S. Pima C/F Far East'' and ''C/F Far East'' quotes are the best quotes for determining program payments mainly because, as one respondent indicated, U.S. exports of ELS cotton are preponderantly to Asian destinations. From 2000 through 2004, the share of ELS exports to Europe averaged 13.5 percent, compared to 76 percent to the Far East and South Asia. A further reason for this price change is that *Cotton Outlook* has announced that it would stop publishing the Northern Europe quotations. Thus, the price quote required in CCC regulations soon will no longer be available. Accordingly, the final rule adopts the commenters suggestion and changes the price quotes required by the regulation from ''American Pima c.i.f. Northern Europe'' and ''c.i.f. Northern Europe'' quotes published by *Cotton Outlook* to ''U.S. Pima C/F Far East'' and ''C/F Far East,'' respectively, as published by *Cotlook Limited,* publisher of *Cotton Outlook.* This change in price quotes will not measurably alter the economic impacts and government outlay results expected from the interim rule.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be not significant and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, Local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 35 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Government Paperwork Elimination Act

CCC and FSA are committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

List of Subjects in 7 CFR Part 1427

Agricultural commodities, Cotton, Price support programs, Reporting and record keeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

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

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

■ 2. Revise subpart G to read as follows:

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

§ 1427.1200 Applicability.

(a) These regulations set forth the terms and conditions under which CCC shall make payments to eligible domestic users and exporters of extra long staple cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC.

(b) CCC will issue payments to domestic users and exporters in any week following a consecutive 4-week period in which:

(1) The LFQ is less than the USPFE; and

(2) Adjusted LFQ is less than 134 percent of the current crop year loan level for the base quality U.S. Pima cotton.

(c) CCC shall prescribe the forms and information collections necessary in administering the ELS cotton competitiveness payment program. Additional terms and conditions for the program are set forth in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1201 [Reserved]

§ 1427.1202 Definitions.

The following definitions apply as used in this subpart:

Consumption means the use of eligible ELS cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted C/F Far East, the price quotation for cotton for shipment no later than August/September of the current calendar year.

ELS means Extra Long Staple.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted C/F Far East, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday through Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost and freight (C/F) Far East, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality.

(1) *Adjusted LFQ* means the LFQ adjusted to reflect the estimated cost of transportation between an average U.S. location and destination ports in the Far East.

(2) *LFQc* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, C/F Far East.

(3) *LFQf* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted C/F Far East.

USPFE means the Friday through Thursday weekly average of the price quotation for base quality U.S. Pima cotton, as determined by CCC for purposes of administering this subpart, C/F Far East.

(1) *USPFEc* means the preceding Friday through Thursday average of the current shipment prices for U.S. Pima cotton, C/F Far East.

(2) *USPFEf* means the preceding Friday through Thursday average of the forward shipment prices for U.S. Pima cotton, C/F Far East.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

(1) Opened by an eligible domestic user on or after October 1, 1999, or

(2) Exported by an eligible exporter on or after October 1, 1999, during a Friday through Thursday period in which a payment rate determined under § 1427.1207 is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade; or

(2) Loose.

(c) Eligible ELS cotton must not be:

(1) ELS for which a payment, under the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw, unprocessed motes;

(4) Textile mill wastes; or

(5) Semi-processed or re-ginned, processed motes.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (a domestic user), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (an exporter), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications must contain the documentation required by this subpart, an ELS Cotton Domestic User/Exporter Agreement and additional information that may be requested by CCC.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the ELS Cotton Domestic User/Exporter Agreement and CCC-issued instructions.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from CCC. To participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to CCC.

§ 1427.1206 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the participant, as CCC determines and announces.

§ 1427.1207 Payment rate.

(a) The payment rate for payments made under this subpart shall be determined as follows:

(1) Beginning the Friday on or following August 1 and ending the week in which the LFQc, the LFQf, the USPFEc, and the USPFEf prices first become available, the payment rate shall be the difference between the USPFE and the LFQ in the fourth week of a consecutive 4-week period in which the USPFE exceeded the LFQ each week, and the adjusted LFQ was less than 134 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and

(2) Beginning the Friday-through-Thursday week after the week in which the LFQc, the LFQf, the USPFEc, and the USFEf prices first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USPFEc and the LFQc in the fourth week of a consecutive 4-week period in which the USPFEc exceeded the LFQc each week, and the adjusted LFQc was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If either or both the USPFEc and the LFQc are not available, the payment rate may be the difference between the USPFEf and the LFQf.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, LFQc, and LFQf for only one to three weeks, such as may occur in the spring when the LFQ is succeeded by the LFQc and the LFQf

(spring transition), and at the start of a new marketing year when the LFQc and the LFQf are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, the LFQc and USPFEc, in combination with the LFQ and USPFE, shall, to the extent practicable, be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both USPFEc price and the LFQc are not available, the USPFEf and the LFQf in combination with the USPFE price and LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the USPFE, USPFEc, USPFEf, the LFQ, the LFQc, and the LFQf:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If none of the USPFE, USPFEc, or USPFEf prices is available, or if none of the LFQ, LFQc, or LFQf is available, the payment rate shall be zero and shall remain zero unless and until sufficient USPFE prices or the LFQ again becomes available, the USPFE, USPFEc, or USPFEf price exceeds the LFQ, the LFQc, or the LFQf, as the case may be, and the LFQ, the LFQc, or the LFQf, as the case may be, adjusted for transportation, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose lint that is of a suitable quality, without further processing, for spinning, papermaking or bleaching, shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment re-weighed by a licensed weigher and furnishes a copy of the certified weights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, as required by this subpart, CCC instructions, and the ELS Cotton Domestic User/Exporter Agreement.

Signed in Washington, DC, on October 24, 2005.

Michael Yost,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05–22082 Filed 11–4–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 121, 135, 145, and 183

[Docket No. FAA–2003–16685; Amendment Nos. 21–86, 121–311, 135–97, 145–23, and 183–12]

RIN 2120–AH79

Establishment of Organization Designation Authorization Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Notice of Office of Management and Budget approval for information collection.

SUMMARY: This notice announces the Office of Management and Budget's approval of the information collection requirements in the final rule, Establishment of Organization Designation Authorization Program. Affected parties were not required to comply with the information collection requirements of this rule until a notification of OMB approval was published in the **Federal Register**.

DATES: This rule was published in the **Federal Register** on October 13, 2005 (70 FR 59932). The FAA received OMB approval for the information collection requirements on September 22, 2005. The final rule becomes effective on November 14, 2005, and affected parties will be required to comply with information collection requirements at that time.

FOR FURTHER INFORMATION CONTACT: For technical issues, Ralph Meyer, Delegation and Airworthiness Programs Branch, Aircraft Engineering Division (AIR–140), Aircraft Certification Service, Federal Aviation Administration, 6500 S. MacArthur Blvd, ARB Room 308, Oklahoma City, OK 73169; telephone (405) 954–7072; facsimile (405) 954–2209, e-mail *ralph.meyer@faa.gov*. For legal issues, Karen Petronis, Office of the Chief Counsel, Regulations Division (AGC–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–7971; e-mail *karen.petronis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2005, the FAA published the final rule, Establishment of Organization Designation Authorization Program (70 FR 59932). This rule contains information collection requirements in §§ 183.43, 183.45, 183.53, 183.55, 183.57, 183.63, and 183.65. As we noted in the rule's preamble, affected parties were not required to comply with these information collection requirements until the Office of Management and Budget (OMB) assigned a control number for them, and the FAA published the number in the **Federal Register**.

According to the Paperwork Reduction Act, OMB approved the FAA's request for information collection on September 22, 2005. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid OMB control number. The OMB control number associated with this collection is 2120–0704. The request was approved by OMB without change and expires on September 30, 2008.

Issued in Washington, DC, on October 31, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–22129 Filed 11–4–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 738, 740, 742, 744, and 772

[Docket No. 051020273–5273–01]

RIN [0694–AD61]

Revision of License Requirements and Licensing Policy, and Increased Availability of License Exceptions for Certain North Atlantic Treaty Organization (NATO) Member States

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends certain provisions of the Export Administration Regulations (EAR) that affect Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. These amendments provide consistent treatment to all NATO member states with respect to national security-based license requirements, national security licensing policy, availability of certain License Exceptions, and certain in-transit transactions.

DATES: Effective date: November 7, 2005.

ADDRESSES: Comments concerning this rule may be sent by e-mail to *rpd2@bis.doc.gov,* by fax to 202 482 3355 or to the Regulatory Policy Division, Bureau of Industry and Security, Room H2017, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694–AD47 in all comments. Comments regarding the Paperwork Reduction Act burden estimates or any other aspect of the collection of information affected by this rule may be sent to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to 202 395 7285; with a copy to the Regulatory Policy Division, Bureau of Industry and Security at one of the addresses above.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services at *warvin@bis.doc.gov* or 202 482 2440.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2004, the Bureau of Industry and Security (BIS) published an amendment to the EAR to remove certain regional stability and crime control license requirements to new NATO member countries. Seven countries acceded to NATO on March 29, 2004: Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia. This final rule amends the EAR to provide for these newer NATO member states and for three other NATO member states, Hungary, Iceland, and Poland, treatment consistent with all other NATO member states respect to national security license requirements (§ 742.2(a)) and Supplement No. 1 to part 738 (Country Chart)). This final rule also removes Bulgaria, Estonia, Latvia and Lithuania from General Prohibition Eight, which concerns certain in-transit transactions, (§ 736.2(b)(8)), and removes restrictions on License Exceptions related to crime control from Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Poland, Romania, Slovakia, and Slovenia (§ 740.2). This final rules adds Bulgaria, Estonia, Latvia, Lithuania and Romania to Country Group B, and removes them from Country Group D:1 (Supplement No. 1 to part 740). Exports to these countries are now eligible for certain license exceptions set forth in part 740, and the national security licensing policy set forth in § 742.2(b) for Country Group D:1 countries no longer applies. The Czech Republic, Iceland, Poland, Slovakia and Slovenia have been included in Country Group B since it was created in 1996. Finally, this final rule makes certain technical and conforming amendments to other provisions of the EAR that refer to NATO member states or to individual countries that are now NATO member states. Specific amendments made by this final rule are described below.

Amendments to General Prohibition Eight

General Prohibition Eight (§ 736.2(b)(8) of the EAR) requires a license for items that transit listed countries if the items would require a license to be exported or reexported to those countries and no license exception would authorize the export or reexport. This rule removes NATO member states Bulgaria, Estonia, Latvia, and Lithuania from the list of countries in General Prohibition Eight.

Amendments to National Security License Requirements

Section 742.4(a) of the EAR sets forth the license requirements for items listed on the Commerce Control List (CCL) with ''National Security'' indicated as a reason for control. Prior to publication of this rule, § 742.4(a) required a license for export or reexport ''to all destinations except Country Group A:1 and cooperating countries'' of any item in an Export Control Classification Number (ECCN) that included ''NS Column 2'' in its ''License Requirements'' section. This rule adds Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia to the destinations excepted from the ''NS Column 2'' license requirement in § 742.4(a). All other NATO member states other than the United States are already exempt from this license requirement because they are listed in Country Group A:1. Country Group A:1 is at Supp. No. 1 to Part 740 of the EAR.

To reflect the changes made to § 742.4(a), this rule also amends Supplement No. 1 to part 738 of the EAR by removing the ''X'' from the column labeled ''NS 2'' on the Country Chart in the rows for Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Poland, Romania, Slovakia and Slovenia.

Amendments to Restrictions on Use of License Exceptions

Section 740.2 of the EAR imposes certain restrictions on the use of License Exceptions. Paragraph (a)(4) of that section imposes restrictions on the use of License Exceptions when exporting or reexporting commodities controlled for crime control reasons. This rule replaces the phrase ''Iceland, New Zealand or countries listed in Country Group A:1'' in paragraph (a)(4) of § 740.2, with the phrase ''Australia, Japan, New Zealand or a NATO member state.'' The effect of this change is to eliminate the restrictions imposed by paragraph (a)(4) on exports and reexports to Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Poland, Romania, Slovakia and Slovenia. Although Iceland is no longer mentioned by name in paragraph (a)(4), it will continue to be exempt from the restrictions imposed by paragraph (a)(4) because it is a NATO member state. Although Country Group A:1 is no longer mentioned by name, all of its members will continue be exempt, either because they are NATO member states or because they are now mentioned by name in paragraph (a)(4).

Amendments to Country Groups B and D:1 Affecting License Exception Eligibility and Licensing Policy

Supplement No. 1 to Part 740 contains several tables of ''Country Groups'' that are used to identify, among other things, License Exception eligibility and licensing policy. This rule adds Bulgaria, Estonia, Latvia, Lithuania, and Romania to Country Group B and removes them from Country Group D:1.

Effects of the Amendments to Country Group B

License Exceptions found in § 740.3, Shipments of limited value (LVS); § 740.4, Shipments to Country Group B countries (GBS); and § 740.6, Technology and software under restriction (TSR) are available only if the destination is in Country Group B. This change makes Bulgaria, Estonia, Latvia, Lithuania, and Romania eligible destinations for exports and reexports that are authorized by License Exceptions LVS, GBS and TSR. All other NATO member states other than the United States continue to be eligible destinations for these License Exceptions because they are already in Country Group B.

Effects of the Amendments to Country Group D:1

License Exceptions found in § 740.9, Temporary imports, exports and reexport (TMP); § 740.10, Servicing and replacement of parts and equipment (RPL); § 740.12, Gift parcels and humanitarian donations (GFT); § 740.14, Baggage (BAG); and § 740.15, Aircraft and vessels (AVS) all contain limitations or restrictions on their use for exports or reexports to destinations in Country Group D:1. Those limitations and restrictions no longer apply to exports and reexports authorized by License Exceptions TMP, GFT, BAG and AVS to Bulgaria, Estonia, Latvia, Lithuania, or Romania. Other NATO member states continue to be exempt from those limitations and restriction because they are not in Country Group D:1.

Section 742.4(b)(1) of the EAR states the licensing policy for export and reexport of national security controlled items to destinations outside Country Group D:1. That licensing policy ''is to approve * * * unless there a significant risk that the items will be diverted to a country in Country Group D:1.'' Applications to export national security controlled items to Bulgaria, Estonia, Latvia, Lithuania, or Romania are now subject to this licensing policy. Applications to export or reexport national security controlled items to other NATO member states continue to be subject to this policy because they are not in Country Group D:1.

Section 742.4(b)(2) of the EAR states the licensing policy for export and reexport of national security controlled items to destinations in Country Group D:1. That licensing policy is ''to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or otherwise would not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.'' Applications to export or reexport national security controlled items to Bulgaria, Estonia, Latvia, Lithuania, or Romania are no longer subject to this licensing policy. Applications to export or reexport national security controlled items to other NATO member states continue not to be subject to this policy because they are not in Country Group D:1.

Technical and Conforming Changes

Sections 740.15(c)(1), 740.15(c)(2), 744.7(b)(1) and 744.7(b)(2) each contain reference to conditions that apply to most countries in Country Group D:1. Section 740.15(c) deals with the use of License Exception AVS to supply U.S. or Canadian vessels, airplane or airline installations or agents. Section 744.7 requires a license for exports and reexports to service aircraft if the item being exported or reexported would require a license the country where the vessel or aircraft is located, in which it is registered or by which it is controlled, leased or chartered. Paragraph (b) provides certain exceptions for U.S. or Canadian carriers. Prior to publication of this rule, each of those references excluded Romania by name from the conditions that apply to most Country Group D:1 countries. By removing Romania from Country Group D:1, this rule eliminates the need to exclude Romania by name. Therefore, this rule also eliminates the references to Romania from §§ 740.15(c)(1), 740.15(c)(2), 744.7(b)(1) and 744.7(b)(2).

Section 742.4(b)(5) lists certain Country Group D:1 countries that, because of their efforts to adopt safeguard measures for exports and reexports, are ''accorded enhanced favorable consideration licensing treatment.'' Three of the countries that were listed in § 742.4(b)(5) prior to publication of this rule, Bulgaria, Latvia and Lithuania, are removed from Country Group D:1 by this rule. The removal of those countries from Country Group D:1 eliminates the need to list them in § 742.4(b)(5). Therefore this rule removes those three countries from § 742.4(b)(5).

This rule also removes Bulgaria, Estonia, Latvia, Lithuania and Romania from the definition of ''Controlled Country'' in § 772.1 to make that definition consistent with the removal of those countries from Country Group D:1.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA).

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection approved by the OMB under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS expects that this rule will eliminate the need for approximate 56 BIS–748 submissions per year.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, 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

15 CFR Parts 736, 738 and 772

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Export, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 736—[AMENDED]

■ 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, May 13, 2004; 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).

■ 2. In § 736.2, revise paragraph (b)(8)(ii) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(8) * * *

(ii) *Country scope.* This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

* * * * *

PART 738—[AMENDED]

■ 3. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

Supplement No. 1 to Part 738—[Amended]

■ 4. In Supplement No. 1 to part 738, the Country Chart, remove the ''X'' from the NS 2 column for Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland Romania, Slovakia, and Slovenia.

PART 740—[AMENDED]

■ 5. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 6. In § 740.2 revise paragraph (a)(4) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(4) The commodity you are shipping is a specially designed crime control and detection instrument or equipment described in § 742.7 of the EAR and you are not shipping to Australia, Japan, New Zealand, or a NATO member state (*see* definition of NATO in § 772.1 of the EAR), unless the shipment is authorized under License Exception BAG, § 740.14(e) of this part (shotguns and shotgun shells).

* * * * *

§ 740.15 [Amended]

■ 7. In § 740.15, remove the phrase ''and Romania'' from paragraph (c)(1), introductory text and from paragraph (c)(2), introductory text.

Supplement No. 1 to Part 740—[Amended]

■ 8. In Supplement No. 1 to Part 740:

■ Add to the table labeled ''Country Group B—Countries'' in alphabetical order Bulgaria, Estonia, Latvia, Lithuania, and Romania; and

■ Remove Bulgaria, Estonia, Latvia, Lithuania, and Romania from the table labeled ''Country Group D.''

PART 742—[AMENDED]

■ 9. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec 1503, Pub.L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; 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).

■ 10. In § 742.4, revise the third sentence of paragraph (a) and revise paragraph (b)(5) to read as follows:

§ 742.4 National security.

(a) *License requirements.* * * * A license is required to all destinations except Country Group A:1 and cooperating countries (see Supplement No. 1 to part 740), Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia for all items in ECCNs on the CCL that include NS Column 2 in the Country Chart column of the ''License Requirements'' section.

* * *

(b) * * *

(5) In recognition of efforts made to adopt safeguard measures for exports and reexports, Kazakhstan, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

* * * * *

PART 744—[AMENDED]

■ 11. The authority citation for part 744 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. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; 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).

§ 744.7 [Amended]

■ 12. In § 744.7, remove the phrase ''and Romania'' from paragraph (b)(1) introductory text and paragraph (b)(2) introductory text.

PART 772—[AMENDED]

■ 13. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 772.1 [Amended]

■ 14. In § 772.1, remove ''Bulgaria,'', ''Estonia,'', ''Latvia,'', Lithuania,'', and ''Romania,'' from the second sentence of the definition of ''Controlled Country.''

Dated: November 1, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–22079 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

[Docket No.051027277–5277–01; I.D. 102903C]

RIN 0648–AT97

Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries; Data Collection Requirements for U.S. Commercial and Recreational Charter Fishing Vessels

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

ACTION: Final rule; effectiveness and enforcement of collection-of-information requirement.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements pertaining to vessel identification contained in the final rule to implement the approved portions of the U.S. West Coast Highly Migratory Species Fishery Management Plan (HMS FMP), and the effectiveness of those requirements. On February 4, 2004, NMFS partially approved the HMS FMP, and the final rule to implement the approved portions of the HMS FMP was published in the **Federal Register** on April 7, 2004. The HMS FMP final rule contained vessel identification requirements subject to the Paperwork Reduction Act (PRA) that, at the time of publication, were still undergoing OMB review. This action is intended to inform the public of the effective date of the requirement approved by OMB.

DATES: The amendments in this rule are effective January 6, 2006. The vessel identification requirements of 50 CFR 660.704, published on April 7, 2004 (69 FR 18444), are effective on January 6, 2006.

ADDRESSES: Copies of the HMS FMP may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Copies of the HMS FMP final rule, the Final Environmental Impact Statement (FEIS), the Final Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA) are available from NMFS, Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the Small Entity Compliance Guide for the HMS FMP final rule are available on the Southwest Region, NMFS website *http://swr.nmfs.noaa.gov*. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be submitted to Rodney A. McInnis, Regional Administrator, NMFS, Southwest Regional Office at the above address. These comments may also be submitted by e-mail to David__Rostker@omb.eop.gov, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, Southwest Region, NMFS, 760–431–9440, ext. 303.

SUPPLEMENTARY INFORMATION: On April 7, 2004, NMFS published a final rule (69 FR 18444) that implemented the approved portion of the HMS FMP. The rule established, among other measures, data collection and reporting requirements for U.S. West Coast commercial and recreational charter fishing vessels targeting HMS. The HMS FMP final rule contained collection-of-information requirements that could not be made effective, or enforced, prior to approval by the OMB under the PRA. Delayed effectiveness and enforcement of these sections were announced in the April 7, 2004, HMS FMP final rule. In the HMS FMP final rule, NMFS requested comments on the reporting burden estimate or any other aspect of the collection-of-information requirements. No comments were received on the collection-of-information requirements. OMB has approved the collections-of-information requirements codified at 50 CFR 660.704 for vessel identification. This section will be effective on January 6, 2006 and will be enforced beginning on that date. Section 660.704 requires each fishing vessel to display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The official number must be affixed to each vessel in block Arabic numerals at least 10 inches (25.4 cm) in height for vessels more than 25 ft (7.6 m) but equal to or less than 65 ft (19.8 m) in length; and 18 inches (45.7 cm) in height for vessels longer than 65 ft (19.8 m) in length. Markings must be legible and of a color that contrasts with the background.

Pursuant to the PRA, part 902 of title 15 of the Code of Federal Regulations displays the control numbers that OMB has assigned to NMFS information collection requirements. This notice fulfills the requirements of section 3506(c)(1)(B)(i), title 44, United States Code, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement. This final rule codifies OMB control number 0648–0361 for § 660.704.

Classification

The Regional Administrator, NMFS, Southwest Region determined that the data collection requirements implemented by this final rule are necessary for the conservation and management of the U.S. West Coast HMS fisheries and are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

The data collection requirement implemented by this final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of the HMS FMP final rule published April 7, 2004. The FRFA described the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities, including HMS commercial and recreational charter fishing vessels affected by this action. The contents of the FRFA and the incorporated documents (the IRFA, the RIR, and the FEIS) are not repeated here. A copy of these documents is available upon request (see **ADDRESSES**).

The vessel marking requirement under this final rule will establish an initial one-time reporting burden of 1002.8 hours for the 1,337 participating vessels (an average of 0.75 hours/per vessel).

This final rule contains new collection-of-information requirements approved by OMB under the PRA. Public reporting burden for these collections of information are estimated to average 45 minutes per vessel to affix the official number of a vessel to its bow and weather deck. The cost for this collection will be minimal, the cost of the paint for painting on the numbers and touch ups as needed.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or

other forms of information technology. Send comments or any other aspects of the collections of information to NMFS (see **ADDRESSES**) and by email to *David.Rostker@omb.eop.gov*, or faxed to 202–385–7285.

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared for the HMS FMP final rule. This guide is posted on the NMFS SWR website (*http://swr.nmfs.noaa.gov*) and a hard copy will be sent to all interested parties upon request (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: October 28, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR chapter IX, part 902, is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding a new entry for § 660.704 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

CFR part or section where the information collection requirement is located				Current OMB control number (All numbers begin with 0648–)
*	*	*	*	*
50 CFR				
*	*	*	*	*
660.704				–0361
*	*	*	*	*

[FR Doc. 05–21873 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–22–S

FEDERAL TRADE COMMISSION

16 CFR Part 3

Consent Agreement Settlements; Corrections

AGENCY: Federal Trade Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Trade Commission published a document in the **Federal Register** on April 3, 2001 (66 FR 17622), that, *inter alia,* revised § 3.25(c) of the Commission Rules of Practice by adding a new sentence, and by adding a new clause to an existing sentence, and made those revisions effective on May 18, 2001. The Commission subsequently published a document in the **Federal Register** on December 12, 2001 (66 FR 64142), that, *inter alia,* further revised § 3.25(c), and made those revisions effective on December 12, 2001. Inadvertently, however, the December 12, 2001 document did not include in its depiction of § 3.25(c), as revised, the new sentence and new clause added by the April 3, 2001 document. This document corrects § 3.25(c) by re-adding the new sentence and the new clause originally added by the April 3, 2001 document.

DATES: Effective on May 18, 2001.

FOR FURTHER INFORMATION CONTACT: Donald S. Clark, Secretary of the Commission, at (202) 326–2514.

SUPPLEMENTARY INFORMATION: This is a summary of the FTC's Erratum.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal Access to Justice, Lawyers.

■ Accordingly, 16 CFR part 3 is corrected by making the following correcting amendment:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

■ 1. The authority citation for Part 3 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 3.25(c) to read as follows:

§ 3.25 Consent agreement settlements.

* * * * *

(c) If the proposed consent agreement accompanying the motion has also been executed by complaint counsel and approved by the appropriate Bureau Director, and the matter is still pending before an Administrative Law Judge, the Secretary shall issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve and all proceedings before the Administrative Law Judge shall be stayed with respect to such portions, pending a determination by the Commission pursuant to paragraph (f) of this section. If the matter is pending before the Commission, the Commission in its discretion may, on motion, issue an order withdrawing from adjudication those portions of the matter that a proposed consent agreement would resolve for the purpose of considering the proposed consent agreement.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 05–22162 Filed 11–4–05; 8:45 am]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–8633; 34–52708; 35–28053; 39–2440; IC–27139]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual, Volume II: ''EDGAR Filing'' to reflect updates to the EDGAR system. The revisions are being made primarily to support the amended rules and forms adopted by the Commission to address the use of Form S–8, Form 8–K, and Form 20–F by

Shell Companies and the changes necessary to support the Securities Offering Reform, which will modify and advance significantly the registration, communications, and offering processes under the Securities Act of 1933. The revisions to the Filer Manual reflect changes within Filer Manual, Volume II: ''EDGAR Filing,'' Version 2 (November 2005). The updated manual will be incorporated by reference into the Code of Federal Regulations. EDGAR Filer Manual, Volume I: ''General Information,'' Version 1 (September 2005) and Volume III: ''N–SAR Supplement,'' Version 1 (September 2005) have not been changed.

DATES: *Effective Date:* November 7, 2005. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of November 7, 2005.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux, at (202) 551–8800; for questions concerning the Division of Corporation Finance filings, in the Division of Corporation Finance, Herbert Scholl, Office Chief, EDGAR and Information Analysis, at (202) 942–2940; for questions concerning the Division of Investment Management filings, in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel, at (202) 551–6989; and, in the Office of Filings and Information Services, Barbara Stance, at (202) 551–7209.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual (Filer Manual), Volume II: ''EDGAR Filing.'' The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink [2] and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

The revisions are being made primarily to support the following rules adopted by the Commission:

(1) Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies

Changes to incorporate this rule include:

- Add new 8–K Item 5.06 ''Change in Shell Company Status.''
- Add new submission header field ''Shell Company'' to Forms 10–K, 10–KSB, and 20–F to allow filers to indicate if they meet the shell company criteria as specified in the rule.

(2) Securities Offering Reform

Changes to incorporate this rule include:

- Allow eligible well-known seasoned issuers to register unspecified amounts of different specified types of securities on Form S–3 or Form F–3 registration statements using new EDGAR submission form types S–3ASR and F–3ASR, which are immediately effective upon filing (*i.e.*, automatic shelf registration). Include submission header field to allow issuers using an automatic shelf registration statement to indicate whether the filing fees are paid in advance or on a ''pay-as-you-go'' basis on the shelf registration statement.
- Allow eligible well-known seasoned issuers to add additional securities or classes of securities and eligible majority-owned subsidiaries as additional registrants after an automatic shelf registration statement is effective using new submission form type POSASR. Include a submission header field to allow issuers using an automatic shelf registration statement to indicate whether the filing fees are paid in advance or on a ''pay-as-you-go'' basis on the shelf registration statement.
- Allow well-known seasoned issuers to file a prospectus supplement (submission form types 424B1, 424B2, 424B3, 424B4, 424B5, and 424B7) that includes a calculation of registration fee table. Add new submission header field to allow a well-known seasoned issuer to indicate whether the filing fees are paid in advance or on a ''pay-as-you-go'' basis.
- Allow all issuers to indicate that a prospectus supplement is being filed late using new submission form type 424(b)(8). Well-known seasoned issuers can include a calculation of registration fee table in the filing. Include a submission header field to allow a well-known seasoned issuer to indicate whether the filing fees are paid in advance or on a ''pay-as-you-go'' basis.
- Allow an issuer to file a free writing prospectus (FWP) using new submission form type FWP. Include new submission header fields to indicate the filing is made pursuant to Rule 163, Rule 433, or both. Include new submission header ''First Issuing Entity Filing'' checkbox to indicate that the FWP is the first filing for an asset-backed security issuing entity.
- Allow filers to indicate on submission form type 425 whether the communications also is being filed pursuant to Rule 433, Rule 163, or both.
- Add new submission header fields to submission form types 10–K, 10–KT, and 20–F for filers to indicate if they are well-known seasoned issuers.
- Add new submission header fields to submission form types 10–K, 10–KT, and 20–F for filers, other than investment companies, to indicate that they are not required to file reports pursuant to Section 13 and Section 15(d) of the Securities Exchange Act of 1934.
- Rescind Forms F–2 and S–2 as these forms were eliminated effective December 1, 2005.

For EDGAR Release 9.2, the EDGARLink software and submission templates 1, 2, and 3 will be updated to support the aforementioned forms and

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. The Commission granted the authorization to publish the release adopting the reorganized EDGAR Filer Manual, Release No. 33–8612 (September 21, 2005) [70 FR 57130].

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release Nos. 33–6977 (February 23, 1993) [58 FR 14628], IC–19284 (February 23, 1993) [58 FR 14848], 35–25746 (February 23, 1993) [58 FR 14999], and 33–6980 (February 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (December 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33–7472 (October 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40934 (January 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33–7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33–7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33–8007 (September 24, 2001) [66 FR 49829], in which we implemented EDGAR Release 8.0; Release No. 33–8224 (April 30, 2003) [66 FR 24345], in which we implemented EDGAR Release 8.5; Release Nos. 33–8255 (July 22, 2003) [68 FR 44876] and 33–8255A (September 4, 2003) [68 FR 53289] in which we implemented EDGAR Release 8.6; Release No. 33–8409 (April 19, 2004) [69 FR 21954] in which we implemented EDGAR Release 8.7; Release No. 33–8454 (August 6, 2004) [69 FR 49803] in which we implemented EDGAR Release 8.8; Release No. 33–8528 (February 3, 2005) [70 FR 6573] in which we implemented EDGAR Release 8.10; and Release No. 33–8573 (May 19, 2005) [70 FR 30899] in which we implemented EDGAR Release 9.0; and Release No. 33–8612 (September 21, 2005) [70 FR 57130] in which the Commission granted the authorization to publish the release adopting the reorganized EDGAR Filer Manual.

submission form type changes. It is highly recommended that filers download, install, and use the new EDGARLink software and submission templates to ensure that submissions will be processed successfully. Previous versions of the templates may not work properly. Notice of the update has previously been provided on the EDGAR Filing Web site and on the Commission's public Web site. The discrete updates are reflected on the EDGAR Filing Web site and in the updated Filer Manual Volume II.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. 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.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1580, Washington, DC 20549. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You may also obtain copies from Thomson Financial, the paper document contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is November 7, 2005. In accordance with the APA,[7] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 9.2 is scheduled to become available on November 7, 2005. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[8] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[9] Section 20 of the Public Utility Holding Company Act of 1935,[10] Section 319 of the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[12]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

■ In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 1 (September 2005). The requirements for filing on EDGAR are set forth in the EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 2 (November 2005). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1580, Washington, DC 20549 or by calling Thomson Financial at (800) 638–8241. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also photocopy the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Dated: November 1, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22085 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 553(d)(3).

[8] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[9] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[10] 15 U.S.C. 79t.

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Tetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group Ltd. The ANADA provides for use of tetracycline hydrochloride soluble powder in the drinking water of calves, swine, chickens, and turkeys for the treatment and control of various bacterial infections.

DATES: This rule is effective November 7, 2005.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9808, e-mail: *john.harshman@fda.gov*.

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed ANADA 200–374 that provides for use of TETRAMED 324 HCA (tetracycline hydrochloride), a soluble powder used in the drinking water of calves, swine, chickens, and turkeys for the treatment and control of various bacterial infections. Cross Vetpharm Group Ltd.'s

TETRAMED 324 HCA is approved as a generic copy of Boehringer Ingelheim Vetmedica, Inc.'s TETRASURE 324 (tetracycline hydrochloride), approved under NADA 65–496. The ANADA is approved as of September 13, 2005, and the regulations are amended in § 520.2345d (21 CFR 520.2345d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA has noticed that certain withdrawal times for other approved generic products are not reflected in § 520.2345d. At this time, the regulations are amended to reflect the correct withdrawal times in calves and swine. This action is being taken to improve the accuracy of the regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.2345d is amended by revising the section heading, paragraphs (a) through (c), the heading and introductory text of paragraph (d), and paragraphs (d)(1)(iii) and (d)(2)(iii) to read as follows:

§ 520.2345d Tetracycline powder.

(a) *Specifications.* Each pound of powder contains 25, 102.4, or 324 grams tetracycline hydrochloride.

(b) *Sponsors.* See sponsors listed in § 510.600(c) of this chapter for conditions of use as in paragraph (d) of this section:

(1) No. 000069: 25 grams per pound as in paragraphs (d)(3) and (d)(4) of this section.

(2) Nos. 000010 and 046573: 102.4 and 324 grams per pound as in paragraph (d) of this section.

(3) No. 053501: 102.4 and 324 grams per pound as in paragraphs (d)(1) and (d)(2) of this section.

(4) No. 046573: 102.4 and 324 grams per pound as in paragraph (d)(3) of this section.

(5) Nos. 051259, 057561, 059130, and 061623: 324 grams per pound as in paragraph (d) of this section.

(c) *Related tolerances.* See § 556.720 of this chapter.

(d) *Conditions of use.* It is administered in drinking water as follows:

(1) * * *

(iii) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 4 days of treatment for sponsor No. 053501 and within 5 days of treatment for sponsor Nos. 000010, 046573, 051259, 057561, 059130, and 061623; prepare a fresh solution daily; use as the sole source of tetracycline. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) * * *

(iii) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 7 days of treatment for sponsor No. 053501 and within 4 days of treatment for sponsor Nos. 000010, 046573, 051259, 057561, 059130, and 061623; prepare a fresh solution daily; use as the sole source of tetracycline.

* * * * *

Dated: October 19, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–21889 Filed 11–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 2005P–0366]

Medical Devices; General and Plastic Surgery Devices; Classification of the Low Energy Ultrasound Wound Cleaner

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the low energy ultrasound wound cleaner into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner.'' The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for the class II device.

DATES: This rule is effective December 7, 2005. The reclassification was effective June 25, 2004.

FOR FURTHER INFORMATION CONTACT: David B. Berkowitz, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 152.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified

into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

In accordance with section 513(f)(1) of the act, FDA issued an order on April 8, 2004, classifying the Celleration MIST Therapy System™ in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On April 29, 2004, Celleration, Inc., submitted a petition requesting classification of the Celleration MIST Therapy System™ under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA has determined that the low energy ultrasound wound cleaner intended for the cleaning and maintenance debridement of wounds can be classified in class II with the establishment of special controls. FDA believes that class II special controls provide reasonable assurance of the safety and effectiveness of the device.

The device is assigned the generic name ''Low energy ultrasound wound cleaner,'' and it is identified as a device that uses ultrasound energy to vaporize a solution and generate a mist that is used for the cleaning and maintenance debridement of wounds. Low levels of ultrasound energy may be carried to the wound by the saline mist.

The potential risks to health associated with the device are: Delayed wound healing, thermal damage, inflammation/foreign body response, infection, and electrical shock. The special control guidance document entitled ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner'' aids in mitigating the risk by recommending performance characteristics, safety testing, and appropriate labeling.

Thus, in addition to the general controls of the act, a low energy ultrasound wound cleaner is subject to the special controls guidance document. FDA believes that following the class II special controls guidance document generally addresses the risks to health identified in the previous paragraph of this document. Therefore, on June 25, 2004, FDA issued an order to the petitioner classifying the device as described previously into class II and is codifying this device by adding § 878.4410.

Following the effective date of this final rule classifying the device, any firm submitting a 510(k) premarket notification for the device will need to address the issues covered in the special controls guidance. However, the firm would need to show only that its device meets the recommendations of the guidance, or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of this type of device and, therefore, the type of device is not exempt from premarket notification requirements. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the low energy ultrasound wound cleaner that they intend to market.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has

determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

FDA concludes that this rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also concludes that the special controls guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner.''

List of Subjects in 21 CFR Part 878

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 878.4410 is added to subpart E to read as follows:

§ 878.4410 Low energy ultrasound wound cleaner.

(a) *Identification.* A low energy ultrasound wound cleaner is a device that uses ultrasound energy to vaporize a solution and generate a mist that is used for the cleaning and maintenance debridement of wounds. Low levels of ultrasound energy may be carried to the wound by the saline mist.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner.'' See § 878.1(e) for the availability of this guidance document.

Dated: September 28, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–22068 Filed 11–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9228]

RIN 1545–BE50

Low-Income Housing Credit Allocation and Certification; Revisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations that reduce the burden for taxpayers filing Form 8609, ''Low-Income Housing Credit Allocation and Certification.'' The regulations affect owners of low-income housing projects who claim the low-income housing credit.

DATES: *Effective Date:* These regulations are effective November 7, 2005.

Date of Applicability: For date of applicability, see § 1.42–1(j).

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2004, the Treasury Department and IRS published Treasury Decision 9112 in the **Federal Register** (69 FR 3826), which removed impediments to the electronic filing of Form 8609, ''Low-Income Housing Credit Allocation and Certification,'' by revising former § 1.42–1T(e)(1) and (h)(2) and adding § 1.42–1(h). Former § 1.42–1T(e)(1) and (h)(2) required an owner to include a third-party signature from an authorized State or local housing credit agency (Agency) official when filing the form with the owner's Federal income tax return for each year of the 15-year compliance period. Section 1.42–1(h) contains the filing requirement for Form 8609 and no longer requires the third-party signature when filing the form with the owner's Federal income tax return.

Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from an Agency of the jurisdiction where the building is located.

Section 1.42–1(h) provides that a completed Form 8586, ''Low-Income Housing Credit,'' must be filed with the owner's Federal income tax return for each taxable year the owner of a qualified low-income building is claiming the low-income housing credit under section 42(a). A completed Form 8609 must be filed with the owner's Federal income tax return for each of the 15 taxable years of the compliance period. Failure to comply with the requirement of the preceding sentence for any taxable year after the first taxable year in the credit period will be treated as a mathematical or clerical error for purposes of section 6213(b)(1) and (g)(2).

The IRS plans to reduce taxpayer burden by allowing taxpayers to file Form 8609 one time, instead of filing the form with the same information for 15 consecutive years. Taxpayers currently file the form as part of their return with the Internal Revenue Service center that processes their return. Planned revisions to the form should improve administration of the low-income housing credit program by requiring taxpayers to send completed forms to the Philadelphia service center, where each Agency currently sends Part I of the form. The requirements for completing and filing Form 8609 will be addressed in the instructions to the form.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries),

IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.42–1 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1.42–1 Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency.

* * * * *

(h) *Filing of forms.* Unless otherwise provided in forms or instructions, a completed Form 8586, ''Low-Income Housing Credit,'' (or any successor form) must be filed with the owner's Federal income tax return for each taxable year the owner of a qualified low-income building is claiming the low-income housing credit under section 42(a). Unless otherwise provided in forms or instructions, a completed Form 8609, ''Low-Income Housing Credit Allocation and Certification,'' (or any successor form) must be filed by the building owner with the IRS. The requirements for completing and filing Forms 8586 and 8609 are addressed in the instructions to the forms.

* * * * *

(j) *Effective dates.* Section 1.42–1(h) applies to forms filed on or after November 7, 2005. The rules that apply for forms filed before November 7, 2005 are contained in § 1.42–1T(h) and § 1.42–1(h) (see 26 CFR part 1 revised as of April 1, 2003, and April 1, 2005).

Approved: October 26, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–21784 Filed 11–4–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

26 CFR Parts 1, 25, 26, 53, 55, 156, 157, 301

[TD 9229]

RIN 1545–BE63

Extension of Time for Filing Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the simplification of procedures for obtaining automatic extensions of time to file certain returns. The portions of this document that are final regulations provide necessary cross-references to the temporary regulations. The temporary regulations allow individual income taxpayers and certain other taxpayers to obtain an automatic six-month extension of time to file certain returns by filing a single request. For these returns, the temporary regulations also remove the requirements for a signature and an explanation of the need for an extension of time to file. The temporary regulations affect taxpayers who are required to file certain returns and need an extension of time to file. The text of the temporary regulations also 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:* These regulations are effective November 7, 2005.

Applicability Dates: For dates of applicability of these regulations, see §§ 1.6081–2T(i), 1.6081–3T(e)(2), 1.6081–4T(f), 1.6081–5T(g), 1.6081–6T(g), 1.6081–7T(g), 1.6081–10T(f), 1.6081–11T(e), 25.6081–1T(f), 26.6081–1T(f), 53.6081–1T(f), 55.6081–1T(f), 156.6081–1T(f), 157.6081–1T(f), and 301.6081–2T(e).

FOR FURTHER INFORMATION CONTACT: Allen D. Madison, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1, 25, 26, 53, 55, 156, 157, and 301 under section 6081 of the Internal Revenue Code. Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by Title 26 or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months. The regulations under section 6081 provide specific rules taxpayers must follow to request an extension of time to file Federal tax returns. A taxpayer must generally submit a written application for the extension on or before the due date of the return. An extension of time for filing a return does not extend the time for payment of tax.

Explanation of Provisions

Rationale for Change

Currently, most taxpayers other than corporations can receive a full six-month extension of time to file their income tax returns, but to obtain the full six-month extension they must file one application for an initial extension of time and then file a second application to obtain an extension for the balance of the six months. For example, individual income taxpayers request an initial four-month automatic extension on one form and then use a second form to request a two-month discretionary extension. Similarly, trusts and partnerships request an initial three-month automatic extension on one form and then use a second form to request a three-month discretionary extension. Requiring these taxpayers to file two different forms to obtain the full six-month extension creates an unnecessary burden on taxpayers and the IRS, and it can cause unnecessary confusion.

To reduce the complexity of the current extension process, and to provide cost savings and other benefits to taxpayers and the IRS, these temporary regulations simplify the extension process by allowing certain taxpayers to file a single request for an automatic six-month extension of time to file certain returns. Because the extension is automatic, these taxpayers do not need to sign the extension request or provide an explanation of the reasons for requesting an extension. Simplifying, consolidating, and standardizing extension forms will reduce taxpayer burden and will also reduce taxpayer confusion and error in filing the correct form. In addition, taxpayers will save considerable time and expense by not having to complete and file a second request to obtain the full six-month extension. This simplification will also lower processing costs and facilitate increased efficiency for the IRS. According to IRS research, simplification of the extension process will save taxpayers between $73–94 million annually and will save the IRS $4.6 million annually.

Individual Income Taxpayers

Currently, individual income taxpayers submit Form 4868

''Application for Automatic Extension of Time To File a U.S. Individual Income Tax Return,'' for an initial four-month extension of time to file an individual income tax return. The Form 4868 must be filed by the original due date of the return. Taxpayers do not have to sign or give a reason for the extension request. Taxpayers must, however, provide a proper estimate of their tax liability.

Form 4868 does not extend the time for payment of tax. Although no payment of tax is necessary in order to receive the extension, penalties and interest may apply on any amounts that are not paid as of the original due date of the return. Individual income taxpayers can seek an additional two-month extension of time to file on Form 2688, ''Application for Additional Extension of Time To File U.S. Individual Income Tax Return,'' which requires taxpayers to provide an explanation of the need for an extension and must be signed under penalties of perjury.

To reduce burden on taxpayers and the IRS, the temporary regulations provide an automatic six-month extension to taxpayers who must file an individual income tax return if they submit a timely, completed application for extension on Form 4868. Taxpayers do not have to sign the request or explain why an extension is needed in order to receive the automatic six-month extension of time to file. An automatic extension under the temporary regulations does not extend the time for payment of tax. Accordingly, taxpayers must make a proper estimate of any tax due. While no payment of tax is required in order to obtain the extension, failure to pay any tax as of the original due date of the return may subject the taxpayer to penalties and interest.

Corporate Income Taxpayers

These temporary regulations do not change the rules regarding filing extensions for corporate income tax returns. Currently, corporations may obtain an automatic six-month extension of time to file their income tax returns by submitting Form 7004, ''Application for Automatic Extension of Time To File Corporation Income Tax Return.'' Corporations do not have to sign the extension request or give a reason for their request. The Form 7004 does not extend the time for payment of tax. Accordingly, corporations filing Form 7004 must compute the total amount of their tentative tax and make a remittance of any balance due. Although these regulations do not change the rules regarding filing extensions for corporations, they do change the title to and appearance of Form 7004. Taxpayers filing certain other types of returns will now also use Form 7004 to request an automatic six-month extension of time to file. The new Form 7004 will be titled ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns' and will apply to a larger number of returns than the prior form.

Taxpayers Previously Filing Form 2758 to Request an Extension of Time

Under these regulations, taxpayers that previously requested additional time to file certain excise, income, information, and other returns by submitting Form 2758, ''Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns,'' may request an automatic six-month extension of time to file by filing the new Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns.'' Previously, these taxpayers filed Form 2758 in order to obtain a 90-day extension. To obtain the extension, these taxpayers had to sign the form and provide an explanation of the need for the extension. To obtain additional time beyond the 90-day period, these taxpayers had to file Form 2758 a second time, once again signing the request and providing an explanation why the initial extension was not sufficient. The total extension was capped at the statutory maximum of six months. The Form 2758 has been obsoleted by these regulations.

Partnership, REMIC, and Certain Trust Taxpayers

Prior regulations required partnerships, real estate mortgage investment conduits (REMICs) and certain trusts to request three-month automatic extensions of time to file by submitting Form 8736, ''Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts.'' These entities could then file a second request for an additional three-month extension of time to file on Form 8800, ''Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts.'' In order to promote simplified extension procedures, the temporary regulations allow these taxpayers to file an automatic six-month extension of time to file on one application, the new Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns.'' These taxpayers do not have to sign the Form 7004 or provide an explanation for their request in order to receive the automatic six-month extension of time to file. Forms 8736 and 8800 have been obsoleted by these regulations.

The six-month automatic extension of time to file set forth in these temporary regulations applies to returns of pass-through entities, *e.g.*, Form 1065 for partnerships. The Treasury Department and the IRS recognize that because the six-month automatic extension is available for returns of pass-through entities, some taxpayers may not receive information returns from the pass-through entities that they need in order to complete their own income tax returns before those returns are due. For example, an individual income taxpayer with a six-month extension of time to October 15 to file the Form 1040 may not receive a Schedule K–1 from a partnership in which the taxpayer holds an interest until after the partnership files its Form 1065 on its extended due date of October 15. Similarly, a C-corporation with a six-month extension to September 15 to file its Form 1120 may not receive a Schedule K–1 from a calendar year partnership in which it holds an interest until 30 days after its return is due if the partnership files its Form 1065 and sends out the Schedule K–1s on its extended due date of October 15. This filing anomaly existed under prior regulations when the pass-through entity received an extension of time to file to a date on or after the extended due date for the pass-through interest holder, but the automatic six-month extension in these regulations may cause this to happen with more frequency.

Because of this filing anomaly, the availability of a six-month extension of time to file for pass-through entities may result in taxpayers filing an increased number of amended income tax returns. Therefore, it may be appropriate for pass-through entities to have a shorter extension period than their partners or shareholders. The Treasury Department and the IRS request comments on whether a shorter extension of time to file for pass-through entities might reduce overall taxpayer burden. Please follow the instructions in the ''Comments and Public Hearing'' section in the notice of proposed rulemaking accompanying these temporary regulations in this issue of the **Federal Register**.

In order to minimize the burden that might be imposed as a result of this filing anomaly, the Treasury Department and the IRS encourage pass-through entities that request an extension of time

to file to minimize the impact that such extension might have on their partners' or members' ability to timely file (with an extension) their own tax returns.

Transition Rule

These temporary regulations are effective for applications for an automatic extension of time to file certain returns filed after December 31, 2005. Therefore, the temporary regulations apply to applications for extension of time to file tax year 2005 returns. In addition, these temporary regulations also apply to applications for extension of time to file some tax year 2004 returns for certain fiscal year taxpayers because these returns are due after December 31, 2005. Although these fiscal year taxpayers should continue to use the tax year 2004 extension forms, the IRS will grant a six-month extension of time to file if an extension request made on one of these forms would otherwise qualify under these temporary regulations, except for use of the specified form.

Certain Employee Plan Returns

These temporary regulations also allow administrators and sponsors of employee benefit plans subject to Employee Retirement Income Security Act of 1974 (ERISA) to report information concerning the plans and direct filing entities to use a new version of Form 5558, ''Application for Extension of Time To File Certain Employee Plan Returns,'' for an automatic two and one-half-month extension of time to file. Under these regulations, the Form 5558 no longer requires taxpayers to provide an explanation of the need for the extension of time to file or a signature.

Gift Tax Returns

Under section 6075(b)(2), individuals who make a transfer by gift and who request an automatic extension of time to file the individual's income tax return are deemed to have an extension of time to file the return required by section 6019. The temporary regulations also allow donors who do not request an extension of time to file an income tax return to request an automatic six-month extension of time to file Form 709, ''United States Gift (and Generation-Skipping Transfer) Tax Return'' by filing a new version of Form 8892, ''Payment of Gift/GST Tax and/or Application for Extension of Time to File Form 709.'' Under these regulations, the Form 8892 no longer requires an explanation of the need for the extension of time to file or a signature.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Tracey B. Leibowitz of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 157

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 25, 26, 53, 55, 156, 157, and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for § 1.6081–2, § 1.6081–4, § 1.6081–6, and § 1.6081–7 and adding entries in numerical order to read, in part, as follows:

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

Section 1.6081–2T also issued under 26 U.S.C. 6081.

Section 1.6081–4T also issued under 26 U.S.C. 6081.

Section 1.6081–6T also issued under 26 U.S.C. 6081.

Section 1.6081–7T also issued under 26 U.S.C. 6081.

Section 1.6081–10T also issued under 26 U.S.C. 6081.

Section 1.6081–11T also issued under 26 U.S.C. 6081. * * *

§ 1.6081–2 [Removed]

■ **Par. 2.** Section 1.6081–2 is removed.

■ **Par. 3.** Section 1.6081–2T is added to read as follows:

§ 1.6081–2T Automatic extension of time to file certain returns filed by partnerships (temporary).

(a) *In general.* A partnership required to file Form 1065, ''U.S. Partnership Return of Income,'' or Form 8804, ''Annual Return for Partnership Withholding Tax,'' for any taxable year will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the partnership files an application under this section in accordance with paragraph (b) of this section. In the case of a partnership described in § 1.6081–5(a)(1), the automatic extension of time to file allowed under this section runs concurrently with an extension of time to file granted pursuant to § 1.6081–5(a).

(b) *Requirements.* To satisfy this paragraph (b), the partnership must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the later of—

(i) The date prescribed for filing the return of the partnership; or

(ii) The expiration of any extension of time to file granted under § 1.6081–5(a); and

(3) File the application with the Internal Revenue Service office

designated in the application's instructions.

(c) *Payment of section 7519 amount.* An automatic extension of time for filing a partnership return of income granted under paragraph (a) of this section does not extend the time for payment of any amount due under section 7519, relating to required payments for entities electing not to have a required taxable year.

(d) *Section 444 election.* An automatic extension of time for filing a partnership return of income will run concurrently with any extension of time for filing a return allowed because of section 444, relating to the election of a taxable year other than a required taxable year.

(e) *Effect of extension on partner.* An automatic extension of time for filing a partnership return of income under this section does not extend the time for filing a partner's income tax return or the time for the payment of any tax due on a partner's income tax return.

(f) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the partnership a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the partnership's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(g) *Penalties.* See section 6698 for failure to file a partnership return.

(h) *Effective dates.* This section is applicable for applications for an automatic extension of time to file the partnership returns listed in paragraph (a) of this section filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

■ **Par. 4.** Section 1.6081–3 is amended by revising paragraphs (a)(1) and (e).

§ 1.6081–3 Automatic extension of time for filing corporation income tax returns.

(a) * * *

(1) [Reserved]. For guidance on the form to file to request a 6-month extension of time to file corporation income tax returns after December 31, 2005, see § 1.6081–3T.

* * * * *

(e) For guidance on the applicability date of this section, see § 1.6081–3T.

■ **Par. 5.** Section 1.6081–3T is added to read as follows:

§ 1.6081–3T Automatic extension of time for filing corporation income tax returns (temporary).

(a) [Reserved]. For further guidance, see § 1.6081–3(a).

(1) An application must be submitted on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner.

(a)(2) through (d) [Reserved]. For further guidance, see § 1.6081–3(a)(2) through (d).

(e) *Effective dates.* (1) Except as provided in paragraph (e)(2) of this section, this section applies to requests for extensions of time to file corporation income tax returns due after December 7, 2004.

(2) Paragraph (a)(1) of this section applies to applications for an automatic extension of time to file corporation income tax returns filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

§ 1.6081–4 [Removed]

■ **Par. 6.** Section 1.6081–4 is removed.

■ **Par. 7.** Section 1.6081–4T is added to read as follows:

§ 1.6081–4T Automatic extension of time for filing individual income tax return (temporary).

(a) *In general.* An individual who is required to file an individual income tax return will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the individual files an application under this section in accordance with paragraph (b) of this section. In the case of an individual described in § 1.6081–5(a)(5) or (6), the automatic 6-month extension will run concurrently with the extension of time to file granted pursuant to § 1.6081–5.

(b) *Requirements.* To satisfy this paragraph (b), an individual must—

(1) Submit a complete application on Form 4868, ''Application for Automatic Extension of Time To File U.S Individual Income Tax Return,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the later of—

(i) The date prescribed for filing the return; or

(ii) The expiration of any extension of time to file granted pursuant to § 1.6081–5;

(3) File the application with the Internal Revenue Service office designated in the application's instructions; and

(4) Show on the application the full amount properly estimated as tax for the taxable year.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the individual a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 4868 or to the individual's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file an individual income tax return or failure to pay the amount shown as tax on the return. In particular, see § 301.6651–1(c)(3) of this chapter (relating to a presumption of reasonable cause in certain circumstances involving an automatic extension of time for filing an individual income tax return).

(f) *Effective dates.* This section is applicable for applications for an automatic extension of time to file an individual income tax return filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

■ **Par. 8.** Section 1.6081–5 is amended by revising paragraph (b) to read as follows:

§ 1.6081–5 Extensions of time in the case of certain partnerships, corporations, and U.S. citizens and residents.

* * * * *

(b) [Reserved]. For guidance on how a person should demonstrate that the person qualified for the extension in paragraph (a) of this section after December 31, 2005, see § 1.6081–5T.

* * * * *

■ **Par. 9.** Section 1.6081–5T is added to read as follows:

§ 1.6081–5T Extensions of time in the case of certain partnerships, corporations, and U.S. citizens and residents (temporary).

(a) [Reserved]. For further guidance, see § 1.6081–5(a).

(b) In order to qualify for the extension under this section—

(1) A statement must be attached to the return showing that the person for whom the return is made is a person described in paragraph (a) of this section; or

(2) If a person described in paragraph (a) of this section requests additional time to file, the person must request the extension on or before the fifteenth day of the sixth month following the close of the taxable year and check the appropriate box on Form 4868,

''Application for Automatic Extension of Time To File a U.S. Individual Income Tax Return,'' or Form 7004, ''Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns,'' whichever is applicable, or in any other manner prescribed by the Commissioner.

(c) through (f) [Reserved]. For further guidance, see § 1.6081–5(c) through (f).

(g) *Effective date.* This section is applicable for applications for an automatic extension of time to file returns of income for taxpayers listed in paragraph (a) of this section filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

§ 1.6081–6 [Removed]

■ **Par. 10.** Section 1.6081–6 is removed.

■ **Par. 11.** Section 1.6081–6T is added to read as follows:

§ 1.6081–6T Automatic extension of time to file estate or trust income tax return (temporary).

(a) *In general.* An estate or trust required to file an income tax return on Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the estate or trust files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an estate or trust must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Show on the application the amount properly estimated as tax for the estate or trust for the taxable year.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Effect of extension on beneficiary.* An automatic extension of time to file an estate or trust income tax return under this section will not extend the time for filing the income tax return of a beneficiary of the estate or trust or the time for the payment of any tax due on the beneficiary's income tax return.

(e) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the estate or trust a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the estate or trust's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(f) *Penalties.* See section 6651 for failure to file an estate or trust income tax return or failure to pay the amount shown as tax on the return.

(g) *Effective dates.* This section is applicable for applications for an automatic extension of time to file an estate or trust income tax return filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

§ 1.6081–7 [Removed]

■ **Par. 12.** Section 1.6081–7 is removed.

■ **Par. 13.** Section 1.6081–7T is added to read as follows:

§ 1.6081–7T Automatic extension of time to file Real Estate Mortgage Investment Conduit (REMIC) income tax return (temporary).

(a) *In general.* A Real Estate Mortgage Investment Conduit (REMIC) required to file an income tax return on Form 1066, ''U.S. Real Estate Mortgage Investment Conduit Income Tax Return,'' or Form 8831, ''Excise Tax on Excess Inclusions of REMIC Residual Interests,'' for any taxable year will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the REMIC files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a REMIC must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Show on the application the full amount properly estimated as tax for the REMIC for the taxable year.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Effect of extension on residual or regular interest holders.* An automatic extension of time to file a REMIC income tax return under this section will not extend the time for filing the income tax return of a residual or regular interest holder of the REMIC or the time for the payment of any tax due on the residual or regular interest holder's income tax return. An automatic extension will also not extend the time for payment of any excise tax on excess inclusions of REMIC residual interests.

(e) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the REMIC a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the REMIC's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(f) *Penalties.* See sections 6698 and 6651 for failure to file a REMIC income tax return or failure to pay an amount shown as tax on the return.

(g) *Effective dates.* This section is applicable for applications for an automatic extension of time to file REMIC income and excise tax returns listed in paragraph (a) of this section filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

■ **Par. 14.** Section 1.6081–10T is added to read as follows:

§ 1.6081–10T Automatic extension of time to file withholding tax return for U.S. source income of foreign persons (temporary).

(a) *In general.* A withholding agent or intermediary required to file a return on Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,'' for any taxable year will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the withholding agent or intermediary files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a withholding agent or intermediary must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the withholding agent or intermediary a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the withholding agent or intermediary's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file a return or failure to pay an amount shown as tax on the return.

(f) *Effective dates.* This section is applicable for applications for an automatic extension of time to file the withholding tax return for U.S. source income of foreign persons return filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

■ **Par. 15.** Section 1.6081–11T is added to read as follows:

§ 1.6081–11T Automatic extension of time for filing certain employee plan returns (temporary).

(a) *In general.* An administrator or sponsor of an employee benefit plan required to file a return under the provisions of chapter 61 or the regulations thereunder on Form 5500 (series), ''Annual Return/ Report of Employee Benefit Plan,'' will be allowed an automatic 2½-month extension of time to file the return after the date prescribed for filing the return if the administrator or sponsor files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an administrator or sponsor must—

(1) Submit a complete application on Form 5558, ''Application for Extension of Time To File Certain Employee Plan Returns,'' or in any other manner as may be prescribed by the Commissioner; and

(2) File the application with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the administrator or sponsor a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 5558 or to the administrator or sponsor's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See sections 6652, 6692, and the Employee Retirement Income Security Act of 1974 for penalties for failure to file a timely and complete Form 5500.

(e) *Effective dates.* This section is applicable for applications for an automatic extension of time to file Forms 5500 filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 16.** The authority citation for part 25 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 25.6081–1T also issued under the authority of 26 U.S.C. 6081(a). * * *

§ 25.6081–1 [Removed]

■ **Par. 17.** Section 25.6081–1 is removed.

■ **Par. 18.** Section 25.6081–1T is added to read as follows:

§ 25.6081–1T Automatic extension of time for filing gift tax returns (temporary).

(a) *In general.* Under section 6075(b)(2), an automatic six-month extension of time granted to a donor to file the donor's return of income under § 1.6081–4T shall be deemed to also be a six-month extension of time granted to file a return on Form 709, ''United States Gift (and Generation-Skipping Transfer) Tax Return.'' If a donor does not obtain an extension of time to file the donor's return of income under § 1.6081–4T, the donor will be allowed an automatic 6-month extension of time to file Form 709 after the date prescribed for filing if the donor files an application under this section in accordance with paragraph (b) of this section. In the case of an individual described in § 1.6081–5(a)(5) or (6), the automatic 6-month extension of time to file Form 709 will run concurrently with the extension of time to file granted pursuant to § 1.6081–5.

(b) *Requirements.* To satisfy this paragraph (b), a donor must—

(1) Submit a complete application on Form 8892, ''Payment of Gift/GST Tax and/or Application for Extension of Time To File Form 709,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the later of—

(i) The date prescribed for filing the return; or

(ii) The expiration of any extension of time to file granted pursuant to § 1.6081–5; and

(3) File the application with the Internal Revenue Service office designated in the application's instructions.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an extension at any time by mailing to the donor a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 8892, or to the donor's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file a gift tax return or failure to pay the amount shown as tax on the return.

(f) *Effective dates.* This section is applicable for applications for an extension of time to file Form 709 filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Par. 19.** The authority citation for part 26 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 26.6081–1T also issued under the authority of 26 U.S.C. 6081(a).

Par. 20. Section 26.6081–1T is added to read as follows:

§ 26.6081–1T Automatic extension of time for filing generation-skipping transfer tax returns (temporary).

(a) *In general.* A skip person distributee required to file a return on Form 706–GS(D), ''Generation-Skipping Transfer Tax Return for Distributions,'' or a trustee required to file a return on Form 706–GS(T), ''Generation-Skipping Transfer Tax Return for Terminations,'' will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing if the skip person distributee or trustee files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a skip person distributee or trustee must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the skip person distributee or trustee a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the skip person distributee or trustee's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file a generation-skipping transfer tax return or failure to pay the amount shown as tax on the return.

(f) *Effective dates.* This section is effective for applications for an automatic extension of time to file a generation-skipping transfer tax return filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 21**. The authority citation for part 53 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 53.6081–1T also issued under 26 U.S.C. 6081(a).

§ 53.6081–1 [Removed]

■ **Par. 22**. Section 53.6081–1 is removed.

■ **Par. 23**. Section 53.6081–1T is added to read as follows:

§ 53.6081–1T Automatic extension of time for filing the return to report taxes due under section 4951 for self-dealing with a nuclear decommissioning fund (temporary).

(a) *In general.* A *disqualified person* for purposes of section 4951(e)(4) who engaged in self-dealing with a Nuclear Decommissioning Fund, and must report tax due under section 4951 on Form 1120–ND, ''Return for Nuclear Decommissioning Funds and Certain Related Persons,'' will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the disqualified person files an application under this section in accordance with paragraph (b) of this section. For guidance on requesting an extension of time to file Form 1120–ND for purposes of reporting contributions received, income earned, administrative expenses of operating the fund, and the tax on modified gross income, see § 1.6081–3 of this chapter.

(b) *Requirements.* To satisfy this paragraph (b), a disqualified person must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the disqualified person a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the disqualified person's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file or failure to pay the amount shown as tax on the return.

(f) *Effective dates.* This section is applicable for applications for an automatic extension of time to file a return to report taxes due under section 4951 for self-dealing with a Nuclear Decommissioning Fund filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

PART 55—EXCISE TAX ON REAL INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

■ **Par. 24**. The authority citation is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 6001, 6011, 6071, 6091, and 7805 * * *

Section 55.6081–1T also issued under 26 U.S.C. 6081(a). * * *

§ 55.6081–1 [Removed]

■ **Par. 25**. Section 55.6081–1 is removed.

■ **Par. 26**. Section 55.6081–1T is added to read as follows:

§ 55.6081–1T Automatic extension of time for filing a return due under Chapter 44 (temporary).

(a) *In general.* A Real Estate Investment Trust (REIT) required to file a return on Form 8612, ''Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts,'' or a Regulated Investment Company (RIC) required to file a return on Form 8613, ''Return of Excise Tax on Undistributed Income of Regulated Investment Companies,'' will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the REIT or RIC files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a REIC or RIC must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in

any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the REIT or RIC a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the REIT or RIC's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file or failure to pay the amount shown as tax on the return.

(f) *Effective dates.* This section is applicable for applications for an automatic extension of time to file a return due under chapter 44, filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

PART 156—EXCISE TAX ON GREENMAIL

■ **Par. 27**. The authority citation is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805 * * *

Section 156.6081–1T also issued under 26 U.S.C. 6081(a). * * *

§ 156.6081–1 [Removed]

■ **Par. 28**. Section 156.6081–1 is removed.

■ **Par. 29**. Section 156.6081–1T is added to read as follows:

§ 156.6081–1T Automatic extension of time for filing a return due under chapter 54 (temporary).

(a) *In general.* A taxpayer required to file a return on Form 8725, ''Excise Tax on Greenmail,'' will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the taxpayer files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a taxpayer must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the taxpayer a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file or failure to pay the amount shown as tax on the return.

(f) *Effective dates.* This section is applicable for applications for an automatic extension of time to file a return due under chapter 54, filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

■ **Par. 30.** The authority citation is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 157.6081–1T also issued under 26 U.S.C. 6081(a). * * *

§ 157.6081–1 [Removed]

■ **Par. 31.** Section 157.6081–1 is removed.

■ **Par. 32.** Section 157.6081–1T is added to read as follows:

§ 157.6081–1T Automatic extension of time for filing a return due under chapter 55 (temporary).

(a) *In general.* A taxpayer required to file a return on Form 8876, ''Excise Tax on Structured Settlement Factoring Transactions,'' will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the taxpayer files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), the taxpayer must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the taxpayer a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file or failure to pay the amount shown as tax on the return.

(f) *Effective dates.* This section is applicable for applications for an automatic extension of time to file a return due under chapter 55, filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 33.** The authority citation is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 301.6081–2T also issued under 26 U.S.C. 6081(a). * * *

■ **Par. 34.** Section 301.6081–2T is added to read as follows:

§ 301.6081–2T Automatic extension of time for filing an information return with respect to certain foreign trusts (temporary).

(a) *In general.* A trust required to file a return on Form 3520–A, ''Annual Information Return of Foreign Trust with a U.S. Owner,'' will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing the return if the trust files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a trust must—

(1) Submit a complete application on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns,'' or in any other manner prescribed by the Commissioner; and

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the trust a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the trust's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See section 6677 for failure to file information returns with respect to certain foreign trusts.

(e) *Effective dates.* This section is applicable for applications for an automatic extension of time to file an information return with respect to certain foreign trusts listed in paragraph (a) of this section filed after December 31, 2005. The applicability of this section expires on November 4, 2008.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: October 26, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary (for Tax Policy).

[FR Doc. 05–21981 Filed 11–4–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AB04

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends our regulation at 31 CFR part 210 (Part 210), which governs the use of the Automated Clearing House (ACH) system by Federal agencies. Part 210 adopts, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by Federal agencies. We are issuing this rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2003 rule book.

DATES: Comments on the interim final rule are due January 6, 2006. This rule is effective January 6, 2006. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of January 6, 2006.

ADDRESSES: You can download this interim final rule at the following Web site: *http://www.fms.treas.gov/ach.* You may also inspect and copy this rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You can view Treasury's procedural guidelines for ACH payments in the Green Book at the following Web site: *http://www.fms.treas.gov/greenbook.* You may also register at this Web site for e-mail notification of updates to the Green Book.

You may submit comments on the rule by any of the following methods. You may go to the Government-wide rulemaking Web site *http://www.regulations.gov* and follow the instructions for sending your comments electronically. Alternatively, you may email your comments to FMS at 210 *comments@fms.treas.gov.* You may also mail your comments to Matthew Friend, Financial Management Service, 401 14th Street, SW., Room 401, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Matthew Friend, at (202) 874–1251 or *matthew.friend@fms.treas.gov;* or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Part 210 governs the use of the ACH system by Federal agencies. The ACH system is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

We are issuing an interim final rule amending part 210 to reflect certain changes that NACHA has made to the ACH Rules since the publication of NACHA's 2003 rule book. We are publishing this interim final rule in order to indicate which amendments to the ACH Rules we are accepting and which amendments we are rejecting.

II. Summary of Rule Changes

Since 2003, NACHA has published two sets of changes to the ACH Rules. The first set of changes was published in NACHA's 2004 rule book (2004 ACH Rule Book), and the second set of changes was published in NACHA's 2005 rule book (2005 ACH Rule Book). We are adopting all of the rule changes except those relating to the audit provisions of the ACH Rules, which we have previously determined not to incorporate in part 210. The rule changes that we are adopting are largely technical operational changes that will have little or no impact on Federal agencies' use of the ACH system. For example, the changes discussed below to the title and description of Return Reason Code R12 and the expansion of the Automated Accounting Advice Standard Entry Class code are changes that we believe are beneficial to the ACH system, but that do not significantly affect the government's use of the ACH system. In addition, some changes merely clarify existing provisions of the ACH rules (such as the addition of a warranty relating to authentication of receivers of Internet-Initiated Entries) or impose requirements that do not affect or change government ACH processes (such as ACH Operator and Third Party Processor requirements).

A. Changes to ACH Rules Published in 2004 ACH Rule Book

1. *Arbitration Procedures.* Effective December 12, 2003, the ACH Rules governing the arbitration process were modified to (1) Revise the classifications of disputes handled under such procedures; (2) establish criteria under which participation in an arbitration proceeding is mandatory once a dispute has been submitted to arbitration; (3) revise the number of arbitrators and stipends for each arbitration procedure; and (4) expand the time frame in which a dispute may be submitted for arbitration. Arbitration is voluntary under the ACH Rules.

We are adopting these modifications to the arbitration provisions of the ACH Rules.

2. *Copy of Source Document for Accounts Receivable (ARC) Entries.* In the 2004 ACH Rule Book, NACHA published a modification to the rules governing ARC entries to eliminate the requirement that an Originator retain a copy of the back of the source document used for an ARC entry. The rule change became effective December 12, 2003. We are adopting this rule change. We do not anticipate that this rule change will affect government ARC check conversion, since we will continue to scan the backs of checks in order to make it possible to present an item for payment through the check system in the event the item cannot be converted to an ACH entry.

3. *Operational Efficiency Issues—Excused Delay.* In the 2004 ACH Rule Book, NACHA published changes to the ACH Rules that clarify that an operational outage at a Depository Financial Institution (DFI) and ACH Operator due to the general failure or interruption of communication or computer facilities or other equipment does not constitute an excused delay. This rule became effective March 12, 2004. We agree that DFIs and ACH Operators should have contingency backup systems and that a system failure should not excuse the DFI or ACH Operator from the time limits prescribed by the ACH Rules unless the system failure is due to circumstances beyond their control. Accordingly, we are adopting this ACH rule clarification.

4. *Operational Efficiency Issues—Return Reason Code R12 & Check Serial Number XCK in Audit.* NACHA amended the ACH Rules, effective March 12, 2004, to modify the title and description of Return Reason Code R12 from ''Branch Sold to Another DFI'' to ''Account Sold to Another DFI'' to more accurately reflect that this code is used to return an entry that is destined to a specific account that has been sold. The amendment also expanded the audit provisions of the ACH Rules to require a Receiving Depository Financial Institution (RDFI) to verify that it includes the Check Serial Number of XCK entries on the consumer's bank account. We are adopting the amendment modifying the title and description of Return Reason Code R12. We are not adopting the expansion of the audit provisions because the audit provisions are not incorporated in part 210 and do not apply to agencies' use of the ACH system. See 31 CFR 210.2(d)(3); 65 FR 18866 (April 7, 2000).

5. *Operational Efficiency Issues—Automated Accounting Advices.* The ACH Rules were modified, effective September 10, 2004, to modify the Automated Accounting Advice (ADV) Standard Entry Class code. The ADV Standard Entry Class code is used for an optional service offered by ACH Operators in which accounting information is provided to participating DFIs in machine-readable format. The amendment expanded the Total Credit Entry Dollar Amount and Total Debit Entry Dollar Amount Fields within the ADV Company/Batch Control Record from 12 characters to 20 characters to accommodate ADV entries with larger dollar values and created a new File Control Record that is unique to ADV entries. We are incorporating this amendment in part 210.

B. Changes to ACH Rules Published in 2005 ACH Rule Book

1. *Consumer Opt-Out of ARC Check Conversion.* Effective June 4, 2004, NACHA amended the ACH Rules to require Originators of ARC entries to allow Receivers to opt out of ARC check conversion. Originators must ensure that they have established reasonable procedures under which Receivers may notify Originators that their checks are not to be converted to ARC entries. We are adopting this amendment.

FMS provides ARC check conversion services for agencies through a centralized back-end processing operation. We have developed an automated process for identifying checks that are not to be converted, so that those items can be presented for payment as checks rather than as ACH entries. In order to provide flexibility and convenience to the public, we are working with agencies to develop several ways in which remitters can choose to contact the government to instruct that their checks not be converted, including telephone, fax, e-mail and/or regular mail. Agencies are responsible for notifying their remitters that they may opt out of ARC check conversion and for providing remitters with specific opt-out instructions.

2. *ACH Data Security Requirements.* In the 2005 ACH Rule Book, NACHA published an amendment to the ACH rules to expand the data security requirements by requiring all ACH transactions, regardless of the Standard Entry Class Code, that involve the exchange or transmission of banking information via Unsecured Electronic Networks to be either (a) encrypted using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology, or (2) transmitted via a secure session utilizing a commercially reasonable security technology that provides a level of security that, at a minimum, is equivalent to 128-bit RC4 encryption technology. Prior to this amendment, the ACH Rules defined specific data security requirements only for Internet-Initiated (WEB) Entries. This amendment took effect on September 10, 2004.

We agree that ACH transactions that involve the transmission of banking information via an Unsecured Electronic Network should be subject to data security requirements even if the Originator obtains information from the Receiver by telephone and then key-enters the information via the Internet. We are incorporating these requirements in part 210.

3. *Returns Issues—ACH Operator Requirements.* Effective September 10, 2004, the ACH Rules were amended to (1) remove the ACH Operator mandatory field error edit on the Original Receiving DFI Identification Field within the addenda records of dishonored return and contested dishonored return entries since this field is defined as a required, rather than mandatory, field, and (2) establish a requirement within the ACH Rules that prohibits ACH Operators from settling return entries prior to the effective entry date in the Company/Batch Header record of the original entry, as reflected in the return Entry Detail Record. This amendment, which generally affects only ACH Operators, was developed in order to correct an inconsistency in the ACH Rules related to the Original Receiving DFI Identification Field in the addenda records for returns. We do not believe that this amendment has any impact on agencies or Federal payment recipients. We are adopting this amendment.

4. *Third Party Service Provider Issues.* NACHA amended the ACH Rules, effective December 10, 2004, to impose specific obligations and processing requirements for certain types of Third-Party Service Providers (referred to as ''Third-Party Senders'') that act as

intermediaries between an Originator and an Originating Depository Financial Institution (ODFI). We believe it is appropriate to establish a legal framework within the ACH Rules to support a widely-used business practice in which some Originators do not have agreements directly with the ODFI. We are adopting this amendment to the ACH Rules.

5. *Internet Issues.* Effective March 18, 2005, NACHA modified the ACH Rules to (1) add a new ODFI warranty specific to the requirement that an Originator of WEB entries use commercially reasonable methods of authentication to verify the identity of the Receiver, and (2) uniquely identify this requirement under the Originator's obligations with respect to WEB entries. Prior to this modification, the use of verification procedures was implicit in the ACH Rules but was not set forth as an explicit warranty. We are adopting this modification to the ACH Rules.

6. *Returns for Unauthorized Debits to Consumer Accounts Using a Corporate SEC Code.* The ACH Rules were amended, effective March 18, 2005, to reactivate Return Reason Code R05 to accommodate the return of unauthorized debit entries to consumer accounts when those debits were transmitted using a corporate Standard Entry Class Code.

We agree that if an Originator transmits an ACH entry to a consumer account that is erroneously formatted using an incorrect SEC Code, the RDFI should be permitted to apply the return rules and time frames for returning unauthorized debits to consumer accounts, notwithstanding the incorrect SEC Code contained within the entry. Accordingly, we are incorporating this rule in part 210.

C. Section-by-Section Analysis

In order to incorporate in part 210 the ACH rule changes that we are accepting, the only change necessary to the current regulation is to replace references to the 2003 rule book with references to the 2005 ACH Rule Book. No change to part 210 is necessary in order to exclude the amendments to the audit provisions, since part 210 already provides that the ACH audit requirements do not apply to Federal agency ACH transactions.

Section 210.2(d)

We are amending the definition of ''applicable ACH Rules'' at § 210.2(d) to reference the rules published in NACHA's 2005 rule book rather than the rules published in NACHA's 2003 rule book. There have been changes in the numbering of the ACH Rules that are reflected in some of the enumerated exceptions in § 210.2(d). For example, the numbering of the ACH Rules governing the reclamation of benefit payments that are referenced in § 210.2(d)(4) has changed from ACH Rules 2.2.1.8 and 4.7 to ACH Rules 2.2.1.10 and 4.8, respectively. Other numbering changes include: ACH Rule 2.2.1.12, referenced in § 210.2(d)(3), was previously ACH Rule 2.2.1.10; ACH Rule 9.3, referenced in § 210.2(d)(5), was previously ACH Rule 8.3; and ACH Rule 2.10.2.3, referenced in § 210.2(d)(6), was previously ACH Rule 2.10.2.2.

Section 210.3(b)

We are amending § 210.3(b), ''Incorporation by reference—applicable ACH Rules,'' by replacing the references to the ACH Rules as published in the 2003 rule book with references to the ACH Rules as published in the 2005 rule book.

Section 210.6

We are updating several references to ACH Rules to reflect numbering changes that have been made to the ACH Rules.

Section 210.8(b)

We are replacing a reference to ACH Rule 7.7.2 with a reference to ACH Rule 7.7.3 to reflect a numbering change.

III. Procedural Requirements

Request for Comment

We invite comment on all aspects of the interim final rule.

Request for Comment on Plain Language

On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive is effective for all new proposed and final rulemaking documents issued on or after January 1, 1999. We invite comment on how to make this interim final rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of this interim final rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Notice and Comment; Effective Date

We find that good cause exists for issuing this interim final rule without prior notice and comment. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). We believe that it is important to address the publication of new ACH Rules as quickly as possible in order to mitigate the uncertainty and inconvenience to financial institutions and agencies that would result from a time lag in responding to NACHA's rule changes. When we proposed to address changes to the ACH Rules by reviewing and responding to rule changes, we received many comments expressing concern over the potential consequences of such a time lag. Those consequences include uncertainty as to the rules governing government ACH transactions, as well as the inability of financial institutions to segregate the processing of those transactions. For these reasons, we find that we have good cause for issuing this interim final rule without prior notice and comment. Nevertheless, we are inviting comment and will consider the comments received.

Executive Order 12866, Regulatory Planning and Review

This interim final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice and public comment are not required, the Regulatory Flexibility Act (5 U.S.C. 601) does not apply.

Paperwork Reduction Act

This interim final rule contains no new collections of information. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 210

Automated clearing house, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Authority and Issuance

■ For the reasons set out in the preamble, 31 CFR part 210 is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. Revise § 210.2(d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or

before March 18, 2005, as published in Parts II, III, and IV of the ''2005 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network'':

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4; 2.2.1.12; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.10; 2.6; and 4.8 (governing the reclamation of benefit payments);

(5) ACH Rule 9.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of ''Effective Entry Date'' in Appendix Two);

(6) ACH Rule 2.10.2.3 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries); and

(7) ACH Rule 2.11.3 (requiring reporting regarding unauthorized Telephone-initiated entries).

* * * * *

■ 3. Revise § 210.3(b) to read as follows:

* * * * *

(b) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before March 18, 2005, as published in Parts II, III, and IV of the ''2005 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ''2005 ACH Rules'' are available from NACHA—The Electronic Payments Association, 13665 Dulles Technology Drive, Suite 300, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002; and the Financial Management Service, 401 14th Street, SW., Room 401, Washington, DC 20227.

(2) Any amendment to the applicable ACH Rules that takes effect after March 18, 2005, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

* * * * *

§ 210.6 [Amended]

■ 4. Amend § 210.6 as follows:

■ a. Amend the first sentence of § 210.6 by deleting ''7.7.2'' and inserting ''8.7.2.''

■ b. Amend paragraph (g) by deleting ''3.4'' and ''3.10'' and inserting ''3.5'' and ''3.12,'' respectively.

■ c. Amend paragraph (h)(1) by deleting ''3.6.1'' and inserting ''3.7.1.''

■ d. Amend paragraph (h)(2) by deleting ''3.10'' and inserting ''3.12.''

■ e. Amend paragraph (i) by deleting ''3.4'' and ''3.10'' and inserting ''3.5'' and ''3.12,'' respectively.

§ 210.8 [Amended]

■ 5. Amend paragraph (b) introductory text of § 210.8 by deleting ''7.7.2'' and inserting ''8.7.2.''

Richard L. Gregg,

Commissioner.

[FR Doc. 05–22064 Filed 11–4–05; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 581

RIN 0702–AA51

Personnel Review Board

AGENCY: Assistant Secretary of the Army for Manpower and Reserve Affairs, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army amends its regulation on Army Board for Correction of Military Records to be in compliance with the United States District Court for the District of Columbia decision (*Daniel J. Lipsman* v. *Secretary of the Army*—Civil Action No. 02–0151 (RMU), Document Nos. 18, 20, decided September 7, 2004, 2004 U.S. Dist. LEXIS 17866).

DATES: *Effective Date:* December 7, 2005.

ADDRESSES: The Army Review Boards Agency, ATTN: SFMR–RBR, 1901 South Bell Street, 2nd Floor, Arlington, Virginia 22202–4508.

FOR FURTHER INFORMATION CONTACT: Hubert S. Shaw, 703–607–1779.

SUPPLEMENTARY INFORMATION:

A. Background

This rule has previously been published. Section 581.3 contained in 32 CFR part 581 provides Department of the Army policy, criteria and administrative instructions regarding an applicant's request for the correction of a military record. The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register.** The policies and procedures covered by this part fall into that category. The Department of the Army received no responses to its notice of proposed rule change published on August 3, 2005; therefore, no substantive changes were made to the proposed rule.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule change does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule change does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule change does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule change does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule change does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this

rule change is not a significant regulatory action.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 that Executive Order does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 that Executive Order does not apply because the rule change will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Carl W.S. Chun,

Director, Army Board for Correction of Military Records.

List of Subjects in 32 CFR Part 581

Administrative practice and procedure, Archives and Records, Military Personnel.

■ For reasons stated in the preamble the Department of the Army amends part 581 to read as follows:

PART 581—PERSONNEL REVIEW BOARD

■ 1. The authority citation for part 581 continues to read as follows:

Authority: 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

■ 2. Amend § 581.3 by revising paragraphs (g)(4)(i) and (ii) to read as follows:

§ 581.3 Army Board for Correction of Military Records.

* * * * *

(g) * * *

(4) * * *

(i) If the ABCMR receives the request for reconsideration within 1 year of the ABCMR's original decision and if the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives a request for reconsideration more than 1 year after the ABCMR's original decision or after the ABCMR has already considered one request for reconsideration, then the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction.

* * * * *

[FR Doc. 05–22094 Filed 11–4–05; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2005–22853]

RIN 1625–AA09

Drawbridge Operation Regulations; Upper Mississippi River, Ft. Madison, Burlington, and Dubuque, IA, and Rock Island Arsenal, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is temporarily revising the operating regulations for the Ft. Madison Drawbridge, mile 383.9, the Burlington RR Drawbridge, mile 403.1, the Illinois Central Railroad Drawbridge, mile 579.9, and the Rock Island Arsenal Drawbridge, mile 482.9, all located along the Upper Mississippi River. The temporary revision established the winter operating schedules for these four drawbridges while still providing for the reasonable needs of navigation.

DATES: This rule is effective from December 15, 2005 through March 15, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [USCG–2005–22853] and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued, is unnecessary. The closure of lock 19 (mile 364) by the Army Corps of Engineers will reduce the level of navigation on the waterway, making the opening of these drawbridges largely unnecessary.

Background and Purpose

The Rock Island Drawbridge is owned by the U.S. Government (U.S. Army, Rock Island Arsenal); the Ft. Madison and Burlington Railroad Drawbridges are owned by Burlington Northern Santa Fe Railway; the Illinois Central Railroad Drawbridge is owned by the Chicago, Central and Pacific Railroad. Each bridge owner wrote to the Coast Guard and requested the proposed revisions in order to conduct necessary maintenance work. These are typical requests that occur each winter. During the winter months, the Army Corps of Engineers will usually close one or more locks for repair and when the locks are closed, navigation ceases. The lock closures go from mid-Dec until early to mid-March. This lock closure presents bridge owners with an opportunity for conducting bridge repairs that would render the bridges inoperable. The Coast Guard generally requires the bridges to return to operation by the date when the Corps' locks reopen.

Discussion of Rule

This rule temporarily amends section 117.671, allowing the Ft. Madison Drawbridge, mile 383.9, the Burlington RR Drawbridge, mile 403.1, and the Illinois Central Railroad Drawbridge, mile 579.9, to change from an open on demand schedule to one requiring at least 2 hours advance notice. It also allows the Rock Island Arsenal Drawbridge, mile 482.9, to remain in the closed-to-navigation position. It also adds temporary cross-references to section 117.671 under the listings for drawbridge regulations for Iowa and Illinois.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule will not have a significant effect due to the fact that these drawbridge closures are coordinated with the closure of lock 19 (mile 364) by the Army Corps of Engineers. Historically, the Coast Guard authorizes drawbridges to close during the winter season due to the reduced traffic caused by ice and lock closures. The closure of lock 19 prevents most towboat activity; the activity that remains can be accommodated with the advance notice provisions included in the temporary rule.

Small Entities

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

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

It is unlikely that this rule will affect small entities due to the fact that these drawbridge closures are coordinated with the closure of lock 19 (mile 364) by the Army Corps of Engineers. Historically, the Coast Guard authorizes drawbridges to close during the winter season due to the reduced traffic caused by ice and lock closures. The closure of lock 19 prevents most towboat activity; the activity that remains can be accommodated with the advance notice provisions included in the temporary rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378. 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.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.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 (32)(e), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From December 15, 2005 until March 15, 2006, add temporary § 117.T398 to read as follows:

117.T398 Upper Mississippi River.

See § 117.671, Upper Mississippi River, listed under Minnesota.

■ 3. From December 15, 2005 until March 15, 2006, add temporary § 117.T408 to read as follows:

117.T408 Upper Mississippi River.

See § 117.671, Upper Mississippi River, listed under Minnesota.

■ 4. From December 15, 2005 until March 15, 2006, amend § 117.671 by adding paragraphs (c) and (d) to read as follows:

117.671 Upper Mississippi River.

* * * * *

(c) From December 15, 2005 until March 15, 2006, the draws of the Ft. Madison Drawbridge, mile 383.9, the Burlington Railroad Drawbridge, mile 403.1, and the Illinois Central Railroad Drawbridge, mile 579.9, need not open unless at least 24 hours advance notice is given.

(d) From December 15, 2005 until March 15, 2006, the draw of the Rock Island Arsenal Drawbridge, mile 482.9, need not open for the passage of vessels.

Dated: November 1, 2005.

Steve Venckus,

Chief, Office of Regulations & Administrative Law, Office of the Judge Advocate General, United States Coast Guard.

[FR Doc. 05–22101 Filed 11–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Areas at Multiple Military Sites Within the State of Florida

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending seven existing regulations to incorporate changes to the types of restriction, the area affected by the restriction, and/or the administration of six restricted areas and one danger zone. Additionally, the Corps is establishing two new restricted areas. The restricted areas and danger zone are located within the State of Florida. The amended regulations will enable the affected units of the U.S. Military to enhance safety and security around active military establishments. These regulations are necessary to safeguard military vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

EFFECTIVE DATE: December 7, 2005.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, U.S. Army Corps of Engineers, Headquarters, Washington, DC at 202–761–4922, or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the regulations in 33 CFR part 334 by modifying the area or restrictions at sections 334.560, 334.580, 334.610, 334.760, 334.775, 334.778, and 334.780. Additionally, the Corps is establishing two new restricted areas at § 334.635 and § 334.515. The modification to each existing restricted area and danger zone is described in the body of this notice along with a description of the two newly established restricted areas. The proposed rule was published in the March 25, 2005, issue of the **Federal Register** (70 FR 15247).

These amendments to the regulations will allow the Commanding Office at each of the affected military units to restrict passage of persons, watercraft, and vessels at his or her discretion in the interest of National Security until such time he or she determines such restrictions may be terminated.

In response to the proposed rule, two commenters raised concerns about the amendment of § 334.540, specifically the potential loss of public access to areas presently open to public recreational fishing. These issues are still being considered and the proposed changes to § 334.540 are not included in this final rule. Therefore, the restricted area at § 334.550 will not be disestablished, because we proposed to remove that section only if the proposed changes to § 334.540 were adopted.

Procedural Requirements

a. *Review Under Executive Order 12866.* These rules are issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* These rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). We have concluded that the proposed modifications to the existing restricted areas and danger zone and the establishment of two new restricted areas would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, we certify that these rules will not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* We have concluded, based on the minor nature of the changes, that these amendments to the danger zone and restricted areas will not be a major Federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required.

d. *Unfunded Mandates Act.* These rules do not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of

the Act, that small Governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends portions of 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.515 to read as follows:

§ 334.515 U.S. Marine Slip area at Blount Island, Jacksonville, Fla.; restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area identified at the U.S. Marine Corps Slip (also identified as Back River on many nautical maps) located on the southeastern side of Blount Island, Jacksonville, Florida. The entrance to the U.S. Marine Corps Slip is described as commencing from a line drawn between the southwesterly most shore point (latitude 30°23′34″ N., longitude 81°30′52″ W.) and the southeasterly most shore point (latitude 30°23′38″ N., longitude 81°30′36″ W.).

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the area described in paragraph (a) of this section for any reason without the permission of the Commanding Officer, Blount Island Command, Jacksonville, Florida, or his/her authorized representative. The cognizant Captain of the Port (COTP) or Federal Maritime Security Coordinator (FMSC), in performance of Homeland Security responsibilities, may from time to time, need to investigate or cause to investigate incidents of national security with the Blount Island Command Restricted Area. Authority to enter the restricted area under mission critical situations is herby granted to the COTP or FMSC, or his representative. Situations that require COTP or FMSC to immediately access the restricted area shall be reported to the Commanding Officer, Blount Island Command as soon as practicable.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Blount Island Command, Jacksonville, Florida, and/or such persons or agencies as he/she may designate.

■ 3. Amend § 334.560 by revising paragraphs (a) and (b)(2) to read as follows:

§ 334.560 Banana River at Patrick Air Force Base, Fla., restricted area.

(a) *The area.* The waters within an area beginning at a point located at latitude 28°16′19″ N., longitude 80°36′28″ W.; proceed west to latitude 28°16′19″ N., longitude 80°36′35″ W.; thence, southwesterly to latitude 28°14′34″ N., longitude 80°37′08″ W.; thence, southerly to latitude 28°12′44″ N., longitude 80°37′18″ W.; thence, east to latitude 28°12′44″ N., longitude 80°37′11″ W. This encompasses an area reaching from the northern extent described to the southern extent described and extending from the mean high water line waterward a minimum distance of approximately 600 feet.

(b) *The regulations.* (1) * * *

(2) The regulations in this section shall be enforced by the Commander, 45th Space Wing, Patrick Air Force Base, Florida, and such agencies as he/she may designate.

■ 4. Amend § 334.580 by revising paragraph (b) to read as follows:

§ 334.580 Atlantic Ocean near Port Everglades, Fla.

* * * * *

(b) *The regulations.* (1) Anchoring, trawling, dredging, or attaching any object to the submerged sea bottom shall be prohibited in the above described area.

(2) The regulations of this section shall be enforced by the Facility Director, Naval Surface Warfare Center, Detachment Dania, Florida, and such agencies as he/she may designate.

■ 5. Amend § 334.610 by revising paragraph (a)(6) to read as follows:

§ 334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted areas and danger zone.

(a) *The areas.* * * *

(6) *Danger zone.* All waters within an area along the northeast side of the Naval Air Station on Boca Chica Key defined by a line beginning at latitude 24°35.472′ N., longitude 81°41.824′ W.; thence proceed in a northerly direction to a point at latitude 24°36.289′ N., longitude 81°41.437′ W.; thence proceed westerly to a point at latitude 24°36.392′ N., longitude 81°41.970′ W.; thence to a point on shore at latitude 24°35.698′ N., longitude 81°41.981′ W.

* * * * *

■ 6. Add § 334.635 to read as follows:

§ 334.635 Hillsborough Bay and waters contiguous to MacDill Air Force Base, Fla.; restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the following boundaries. Commencing from the shoreline at the northeast portion of the base at latitude 27°51′52.901″ N., longitude 82°29′18.329″ W., thence directly to latitude 27°52′00.672″ N., longitude 82°28′51.196″ W., thence directly to latitude 27°51′28.859″ N., longitude 82°28′10.412″ W., thence directly to latitude 27°51′01.067″ N., longitude 82°27′45.355″ W., thence directly to latitude 27°50′43.248″ N., longitude 82°27′36.491″ W., thence directly to latitude 27°50′19.817″ N., longitude 82°27′35.466″ W., thence directly to latitude 27°49′38.865″ N., longitude 82°27′43.642″ W., thence directly to latitude 27°49′20.204″ N., longitude 82°27′47.517″ W., thence directly to latitude 27°49′06.112″ N., longitude 82°27′52.750″ W., thence directly to latitude 27°48′52.791″ N., longitude 82°28′05.943″ W., thence directly to latitude 27°48′45.406″ N., longitude 82°28′32.309″ W., thence directly to latitude 27°48′52.162″ N., longitude 82°29′26.672″ W., thence directly to latitude 27°49′03.600″ N., longitude 82°30′23.629″ W., thence directly to latitude 27°48′44.820″ N., longitude 82°31′10.000″ W., thence directly to latitude 27°49′09.350″ N., longitude 82°32′24.556″ W., thence directly to latitude 27°49′38.620″ N., longitude 82°33′02.444″ W., thence directly to latitude 27°49′56.963″ N., longitude 82°32′45.023″ W., thence directly to latitude 27°50′05.447″ N., longitude 82°32′48.734″ W., thence directly to latitude 27°50′33.715″ N., longitude 82°32′45.220″ W., thence directly to a point on the western shore of the base at latitude 27°50′42.836″ N., longitude 82°32′10.972″ W. The restricted area will encompass an existing Danger Zone (§ 334.630).

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the area described in paragraph (a) of this section for any reason without the permission of the Commander, MacDill Air Force Base, Florida, or his/her authorized representative.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, MacDill Air Force Base, Florida, and/or such persons or agencies as he/she may designate.

■ 7. Revise § 334.760 to read as follows:

§ 334.760 Naval Support Activity Panama City and Alligator Bayou, a tributary of St. Andrew Bay, Fla.; naval restricted area.

(a) *The area.* The waters within an area beginning at a point located along the shore at the southern end of the facility designated by latitude 30°09′45.6″ N., longitude 85°44′20.6″ W.; thence proceed 100 feet waterward of the mean high water line directly to a point at latitude 30°09′46.8″ N., longitude 85°44′20.6″ W. From this position the line meanders irregularly, following the shoreline at a minimum distance of 100 feet from the mean high water line to a point at latitude 30°10′16.7″ N., longitude 85°45′01.2″ W. located east of the south side of the entrance to Alligator Bayou; thence directly across the entrance to a point at latitude 30°10′23.4″ N., longitude 85°45′05.7″ W. located east of the north side of the entrance to Alligator Bayou; thence continuing the northerly meandering, following the shoreline at a minimum distance of 100 feet from the mean high water line to a point at latitude 30°11′11.3″ N., longitude 85°45′02.8″ W.; thence directly to the shoreline to a point at latitude 30°11′12.3″ N., longitude 85°45′03.2″ W. This encompasses an area reaching from the southern extent described to the northern extent described and extending from the mean high water line waterward a minimum distance of approximately 100 feet.

(b) *The regulations.* (1) No vessel, person, or other craft shall enter, transit, anchor, drift or otherwise navigate within the area described in paragraph (a) of this section for any reason without written permission from the Officer in Charge, Naval Support Activity Panama City, Panama City Beach, Florida, or his/her authorized representative.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(3) The regulations in this section shall be enforced by the Officer in Charge, Naval Support Activity Panama City, Panama City Beach Florida, and such agencies as he/she may designate.

■ 8. Revise § 334.775 to read as follows:

§ 334.775 Naval Air Station Pensacola, Pensacola Bay, Pensacola and Gulf Breeze, Fla.; naval restricted area.

(a) *The areas.* (1) Bounded by a line drawn in the direction of 180° T from the position latitude 30°20′44″ N., longitude 87°17′18″ W. (near the Naval Air Station, due south of the Officer's Club) to position latitude 30°20′09″ N., longitude 87°17′18″ W. thence 94° T to position latitude 30°20′07″ N., longitude 87°16′41″ W., thence 49° T to position latitude 30°20′37″ N., longitude 87°16′01″ W. (southwest end of Lexington finger pier), thence along the shoreline to point of origin.

(2) The waters within an area enclosed by the following points: Beginning at latitude 30°21.58′ N., longitude 87°12.49′ W.; thence to latitude 30°20.25′ N., longitude 87°11.00′ W.; thence to latitude 30°20.28′ N., longitude 87°14.27′ W.; thence to the point of beginning. This encompasses a large triangular area north of Santa Rosa Island and west of the land area between Fair Point and Deer Point.

(b) *The restrictions.* (1) The area described in paragraph (a)(1) of this section will normally be in use Monday through Wednesday between 8 a.m. and 4 p.m. and one evening from 4 p.m. until 8 p.m., every other week.

(2) The area described in paragraph (a)(2) of this section will normally be utilized Wednesday through Friday between 8 a.m. and 4 p.m. for parasail operations.

(3) During those times that specific missions, exercises, or training operations are being conducted, the U.S. Navy vessels and/or crafts designated as essential to the operation(s) by proper U.S. Navy authority shall have the rights-of-way. All other vessels and crafts are required to keep clear of and remain 300 yards from all naval vessels engaged in said operations. Approaching within 300 yards of vessels and/or crafts while they are engaged in operations and/or training exercises is prohibited.

(4) Vessel traffic through the restricted area will remain open during operations and/or exercises; however, mariners shall exercise extreme caution and be on the lookout for swimmers, small craft and helicopters when transiting the area. It should be presumed by all mariners that Navy operations and/or exercises are being conducted whenever military craft and/or helicopters are operating within the restricted area.

(5) Any problems encountered regarding Navy operations/exercises within the restricted area should be addressed to ''Navy Pensacola Command'' on Channel 16 (156.6 MHz) for resolution and/or clarification.

(6) The regulations in this section shall be enforced by the Commander of the Naval Air Station, Pensacola, Florida, and such agencies as he/she may designate.

■ 9. Amend § 334.778 by revising paragraph (b) to read as follows:

§ 334.778 Pensacola Bay and the waters contiguous to Naval Air Station, Pensacola, FL; restricted area.

* * * * *

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering the waters described in paragraph (a) of this section for any reason. All vessels and craft, including pleasure vessels and craft (sailing, motorized, and/or rowed or self-propelled), private and commercial fishing vessels, other commercial vessels, barges, and all other vessels and craft, except vessels owned or operated by the United States and/or a Federal, State, or local law enforcement agency are restricted from transiting, anchoring, or drifting within the above described area, or within 500 feet of any quay, pier, wharf, or levee along the Naval Air Station Pensacola shoreline abutting, nor may such vessels or crafts or persons approach within 500 feet of any United States owned or operated vessel transiting, anchored, or moored within the waters described in paragraph (a) of this section. The Commanding Officer, Naval Air Station Pensacola, or his/her designee, or the Commanding Officer of a vessel of the United States operating within the said area, may grant special permission to a person, vessel, or craft to enter upon the waters subject to the restrictions aforementioned.

(2) The existing ''Navy Channel'' adjacent to the north shore of Magazine Point, by which vessels enter and egress Bayous Davenport and Grande into Pensacola Bay shall remain open to all craft except in those extraordinary circumstances where the Commanding Officer, N.A.S. or his/her designee determines that risk to the installation, its personnel, or property is so great and so imminent that closing the channel to all but designated military craft is required for security reasons, or as directed by higher authority. This section will not preclude the closure of the channel as part of a security exercise; however, such closures of said channel will be limited in duration and scope to the maximum extent so as not to interfere with the ability of private vessels to use the channel for navigation in public waters adjacent thereto not otherwise limited by this regulation.

(3) The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Pensacola, Florida, and such agencies he/she may designate.

■ 10. Amend § 334.780 by revising paragraph (b) to read as follows:

§ 334.780 Naval Air Station Pensacola, Pensacola, FL; restricted area.

* * * * *

(b) *The regulations.* (1) The area is established as a Naval Air Station small boat operations and training area.

(2) All persons, vessels, and other craft are prohibited from entering the waters described in paragraph (a) of this section for any reason. All vessels and craft, including pleasure vessels and craft (sailing, motorized, and/or rowed or self-propelled), private and commercial fishing vessels, other commercial vessels, barges, and all other vessels and craft, except vessels owned or operated by the United States and/or a Federal, State, or local law enforcement agency are restricted from entering, transiting, anchoring, drifting or otherwise navigating within the area described in paragraph (a) of this section.

(3) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station Pensacola and/or such persons or agencies he/she may designate.

Dated: November 1, 2005.

Gerald W. Barnes,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 05–22049 Filed 11–4–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

34 CFR Parts 673, 674, 675, and 676

Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant Programs, and the General Provisions for These Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice regarding reallocation of campus-based aid and waivers of statutory and regulatory provisions pursuant to the Natural Disaster Student Aid Fairness Act, Public Law 109–86.

SUMMARY: The Natural Disaster Student Aid Fairness Act (Aid Fairness Act), Public Law 109–86, signed by the President on October 7, 2005, provides, in part, that the Secretary must reallocate unexpended Federal Perkins Loan (Perkins), Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) program funds (campus-based funds) to institutions of higher education that are located in areas affected by Hurricane Katrina or Hurricane Rita or that have enrolled eligible students who were affected by Hurricane Katrina or Hurricane Rita. In this notice, we announce the reallocation process for institutions of higher education that have enrolled students affected by Hurricane Katrina or Hurricane Rita and waivers or modifications of relevant statutory and regulatory provisions. We will be addressing the reallocation of additional campus-based funds for institutions that are located in an area affected by a Gulf hurricane disaster through a separate process.

FOR FURTHER INFORMATION CONTACT: John Kolotos, U.S. Department of Education, 400 Maryland Avenue, SW., UCP, room 113F2, Washington, DC 20202. Telephone: (202) 377–4027, FAX: (202) 275–4552, or by e-mail at *john.kolotos@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Background

Section 2(b) of the Aid Fairness Act requires the Secretary to reallocate to certain eligible institutions of higher education (institutions) any unexpended campus-based funds from the 2004–2005 award year as supplemental allocations for the 2005–2006 award year. An institution is eligible to receive a reallocation if the institution participates in the program for which excess allocations are being reallocated and (1) is located in an area affected by a Gulf hurricane disaster or (2) has accepted for enrollment any affected students, as defined in the following paragraph, in academic year 2005–2006. The Aid Fairness Act further authorizes the Secretary to determine the manner in which excess allocations will be reallocated and authorizes the Secretary to waive or modify any statutory or regulatory provisions relating to reallocations.

The Aid Fairness Act defines an *affected student* as an individual who has applied for, or received, student financial assistance under title IV of the Higher Education Act of 1965, as amended (HEA), and who (1) was enrolled or accepted for enrollment, as of August 29, 2005, at an institution in an area affected by a Gulf hurricane disaster; (2) was a dependent student enrolled or accepted for enrollment at an institution that is not in an area affected by a Gulf hurricane disaster, but whose parents resided or were employed, as of August 29, 2005, in an area affected by a Gulf hurricane disaster; or (3) suffered direct economic hardship as a direct result of a Gulf hurricane disaster, as determined by the Secretary.

An area affected by a Gulf hurricane disaster is any county or parish in Alabama, Louisiana, Mississippi, and Texas declared by FEMA as Major Disaster Areas designated for Individual Assistance. A listing of those counties and parishes is posted on the Department's ''Information for Financial Aid Professionals'' (IFAP) Web site at *http://www.ifap.ed.gov*.

Reallocation for Institutions Enrolling Affected Students

In this notice, we are addressing the reallocation of campus-based funds for *only* those institutions that participate in at least one of the campus-based programs and that accepted affected students for enrollment in academic year 2005–2006, including institutions located in an area affected by a Gulf hurricane disaster that enrolled affected students. We will be addressing the reallocation of additional campus-based funds for institutions that participate in at least one of the campus-based programs and that are located in an area affected by a Gulf hurricane disaster through a separate process.

Criteria for Determining Economic Hardship

As provided in the Aid Fairness Act in the definition of ''affected student,'' the Secretary has determined that a student has ''suffered direct economic hardship as a direct result of a Gulf hurricane disaster'' if the student (or if a dependent student, the student's parents) lost a domicile, income, or other means of support as a result of a Gulf hurricane disaster.

Procedures for Reallocation of Campus-Based Funds

Institutions that participate in at least one of the campus-based programs and that have accepted for enrollment any affected students may submit a request to the Secretary for reallocation of excess campus-based funds, using the Reallocation Request Form described below. We will be sending to institutions that participate in one or more of the campus-based programs an e-mail message that will include, as an attachment, a Reallocation Request Form. Any of these institutions that have enrolled affected students and are requesting reallocation of funds must complete this form and submit it to the Department via FAX at the number that will be included in the e-mail message. The e-mail message also will specify the deadline date by which requests must

be received by the Department in order for an institution to be considered for reallocated funds.

An institution's Reallocation Request Form must include the following information:

(a) The number of students enrolled at the institution who were enrolled or accepted for enrollment for the 2005–2006 academic year at an institution located in an area affected by a Gulf hurricane disaster, whether or not those students have applied for or are recipients of Federal student aid.

(b) The number of affected students enrolled at the institution who have applied for Federal student aid, as evidenced by a 2005–2006 Student Aid Report (SAR) or Institutional Student Information Record (ISIR), received by the institution.

(c) The total amount of campus-based reallocated funds the institution estimates it will be able to expend in the 2005–2006 award year.

We advise institutions that, based on the amount of total funds available for reallocation, it is possible that the amount received by an institution that has enrolled fewer than 20 affected students would be minimal when compared to the time and effort institutions might need to prepare and submit a request.

The Secretary also will be posting an announcement on the Department's IFAP Web site providing information on the process institutions will need to follow to submit their requests.

Use of Reallocated Campus-Based Funds

An institution does not have to use the reallocated funds it receives directly for affected students, but it must use the funds to make campus-based awards to eligible students or for other statutorily allowed purposes. Any reallocated funds an institution receives must be included in the total program funds used for the purpose of calculating carry-forward amounts, carry-back amounts, Job Location and Development amounts, and campus-based administrative cost allowances.

Statutory and Regulatory Waivers

As noted earlier in this notice, the Aid Fairness Act authorizes the Secretary to waive or modify certain statutory or regulatory requirements pertaining to the reallocated campus-based funds. Under that authority:

(1) The Secretary will not require an institution to provide a non-Federal share or capital contribution under 34 CFR 674.8, 675.26, and 676.21 to match the reallocated campus-based funds.

(2) In its notification to an institution of the amount of its reallocated funds, the Secretary will identify the dollar amount associated with each of the campus-based programs for which reallocated funds are being provided to the institution. However, the Secretary will waive the funds transfer limitations of 34 CFR 674.18, 675.18, and 676.18, and allow the institution to transfer up to 100 percent of the reallocated funds it receives under any of the programs to either the FSEOG or FWS program, provided that the institution participates in the program(s) to which the funds are transferred. However, the institution cannot transfer any of the reallocated FSEOG or FWS funds to its Perkins Loan program.

(3) Normally, under 34 CFR 673.4, an institution may use reallocated FWS funds only to pay students performing community service activities. However, an institution is not required to use any reallocated FWS funds it receives under this process for community service purposes. Nor is the institution required to use the amount of its FWS reallocation in calculating the seven percent community service requirement.

Documenting Requests for, and Use of, Reallocated Campus-Based Funds

An institution that requests supplemental campus-based funds under this reallocation process must maintain documentation supporting its request, including a list of the names of the affected students included in the institution's request. In addition, the institution must maintain information that documents how each affected student qualifies under one of the three elements of the definition of ''affected student'' described in this notice.

The Secretary also reminds institutions that they are responsible for accounting properly for any funds received and expended under the Title IV, HEA programs, including any funds received as a result of hurricane related statutory, regulatory, or administrative provisions. Each institution that receives such funds is alerted that the Secretary may request a separate accounting or report of its use of those funds.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loans)

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1070c–1070c–4, 1071–1087–2, 1087a–1087j, 1087aa–1087ii, 1094, and 1099c; 42 U.S.C. 2751–2756b; Pub. L. 109–86.

Dated: November 2, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–22126 Filed 11–4–05; 8:45 am]

BILLING CODE 4000–01–P

Proposed Rules

Federal Register
Vol. 70, No. 214
Monday, November 7, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 05–003–2]

Importation of Peppers From Certain Central American Countries; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction

SUMMARY: We are correcting two errors in a proposed rule that would amend the fruits and vegetables regulations to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States without treatment. The proposed rule was published in the **Federal Register** on October 12, 2005 (70 FR 59283–59290, Docket No. 05–003–1).

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–8758.

SUPPLEMENTARY INFORMATION: On October 12, 2005, we published in the **Federal Register** (70 FR 59283–59290, Docket No. 05–003–1) a proposed rule that would amend the fruits and vegetables regulations in 7 CFR part 319 to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States without treatment.

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, we stated that Guatemala and Honduras contained areas that had been determined to be free of the Mediterranean fruit fly (Medfly) in accordance with § 319.56–2(f). This information was incorrect. The Department of Peten in Guatemala is currently the only Medfly-free area in the five Central American countries covered by the proposed rule.

Also in the supplementary information of the proposed rule, under the heading ''Paperwork Reduction Act,'' we stated that the estimated total annual burden on respondents was 2,299 hours. This number was incorrect. It should have read 2,999 hours. This document corrects these errors.

Correction

In FR Doc. 05–20388, published on October 12, 2005 70 FR 59283–59290, make the following corrections: On page 59285, second column, fourth paragraph, in the second sentence, correct ''Honduras and Guatemala are the only Central American countries covered by this proposal that contain such areas.'' to read ''Guatemala is the only Central American country covered by this proposal that contains such areas.'' On page 59288, second column, eighth paragraph, in the first sentence, correct ''2,299'' to read ''2,999'.

Done in Washington, DC, this 1st day of November 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–22176 Filed 11–4–05; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV05–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2005–2006 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the establishment of final free and restricted percentages for the 2005–2006 crop year. The percentages are 58 percent free and 42 percent restricted and will establish the proportion of cherries from the 2005 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by December 7, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–5698, or e-mail: *moabdocket.clerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and

Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2005–2006 crop year, beginning July 1, 2005, through June 30, 2006. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; District seven—Utah; District eight—Washington, and District nine—Wisconsin. Districts five and six (Oregon and Pennsylvania, respectively) will not be regulated for the 2005–2006 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon and Pennsylvania, handlers in those districts will not be subject to volume regulation during the 2005–2006 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, because tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year before new crop supplies are available for marketing.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast or by an average of such other crop estimates for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 23, 2005, and computed, for the 2005–2006 crop year, an optimum supply of 169 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds, or such other amount, as the Board with the approval of the Secretary, may establish.

The Board also recommended an economic adjustment of 16 million pounds to be subtracted from the surplus to recognize the decrease in the optimum supply formula which includes total production amounts from the 2002 crop disaster year. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 244 million pounds; a 28 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 169 million pounds which resulted in 2005–2006 tonnage requirements (adjusted optimum supply) of 141 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the 2005–2006 crop year. Subtracting the adjusted optimum supply of 141 million pounds from the USDA crop estimate (244 million pounds) results in a surplus of 103 million pounds of tart cherries. An economic adjustment of 16 million pounds is subtracted from the 103 million pound surplus that leaves a total

surplus of 87 million pounds. The surplus was divided by the production in the regulated districts (241 million pounds) and resulted in a restricted percentage of 36 percent for the 2005–2006 crop year. The free percentage was 64 percent (100 percent minus 36 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2005–2006 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	169
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	169
Preliminary Percentages:	
(4) USDA crop estimate	244
(5) Carryin held by handlers as of July 1, 2005	28
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)	141
(7) Surplus (restricted tonnage) (Item 4 minus Item 6)	103
(8) Economic adjustment	16
(9) Surplus (Item 7 minus Item 8)	87
(10) USDA crop estimate for regulated districts	241

	Percentages	
	Free	Restricted
(11) Preliminary percentages (Item 9 divided by Item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	64	36

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry. No modifications were made for this crop year.

USDA establishes final free and restricted percentages through the informal rulemaking process. These percentages make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by USDA and 100 percent is the final restricted percentage. The Board met on September 9, 2005, to recommend final free and restricted percentages.

The actual production reported by the Board was 267 million pounds, which is a 23 million pound increase from the USDA crop estimate of 244 million pounds.

A 29 million pound carryin (based on handler reports) was subtracted from the Board's optimum supply of 169 million pounds, yielding an adjusted optimum supply for the current crop year of 140 million pounds. The adjusted optimum supply of 140 million pounds was subtracted from the actual production of 267 million pounds, which resulted in a 127 million pound surplus. An economic adjustment of 16 million pounds was subtracted from the surplus for a total of 111 million pounds of surplus tart cherries. The total surplus of 111 million pounds is divided by the 264 million-pound volume of tart cherries produced in the regulated districts. This results in a 42 percent restricted percentage and a corresponding 58 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2005–2006 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	169
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	169
Final Percentages:	
(4) Board reported production	267
(5) Carryin held by handlers as of July 1, 2005	29
(6) Adjusted optimum supply (Item 3 minus Item 5)	140
(7) Surplus (restricted tonnage) (Item 4 minus Item 6)	127
(8) Economic adjustment	16
(9) Total Surplus (Item 7 minus Item 8)	111
(10) Production in regulated districts	264

	Percentages	
	Free	Restricted
(11) Final Percentages (Item 9 divided by Item 10 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	58	42

USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by this action which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of additional tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 17 million pounds would be made available to handlers this season in accordance with USDA Guidelines. This release would be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2000/2001 through 2004/2005, approximately 93.4 percent of the U.S. tart cherry crop, or 216.8 million pounds, was processed annually. Of the 216.8 million pounds of tart cherries processed, 59 percent was frozen, 28 percent was canned, and 13 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/1988 to 36,950 acres in 2004/2005. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 70 percent of the U.S. tart cherry crop each year.

The 2005/2006 crop is relatively large in size at 266.7 million pounds. This is the highest level of production since the 2001/2002 crop. The largest crop occurred in 1995/1996 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry industry uses an industry-wide storage program as a supplemental coordinating mechanism

under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storing, interest, and handling stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 264 million pounds. A 42 percent restriction means that 185 million pounds are available to be shipped to primary markets.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 17 million pounds being available for the primary market. A total of 202 million pounds are available for the primary market sales.

The econometric model is used to estimate grower prices with and without regulation. With volume controls, grower prices are estimated to be approximately $0.08 higher than without volume controls.

The use of volume controls is estimated to have a positive impact on grower's total revenues. With restriction, revenues are estimated to be $3.9 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 42 percent restricted percentage would not unduly burden producers, particularly smaller growers. The 42 percent restriction would be applied to the growers in Michigan, New York, Utah, Washington, and Wisconsin. The growers and handlers in the other two states covered under the marketing order will benefit from the market stability anticipated to result from this proposed action.

Grower prices were reported by NASS at $0.323 per pound for the 2004–2005 crop year and $0.353 for the 2003–2004 crop year. While grower prices have not been established in the 2005–2006 crop year, some processors have reported that growers have received an initial payment somewhere in the low 20 cent per pound range for free production. There will likely not be any additional payments by processors because of the larger than anticipated crop and the amount of surplus. The final grower price will likely be less than $0.20 per pound for combined free and restricted production. This estimated price is less than the cost of production which is calculated to be $0.31 per pound at a yield of 7,200 pounds per acre. These cost estimates are based on a 2003 cost of production study by the Michigan State University Extension Service.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2005–2006 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2005 of the free and restricted percentages proposed to be established by this rule (58 percent free and 42 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2005–2006 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been

previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2005–2006 crop. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.254 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.254 Final free and restricted percentages for the 2005–2006 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2005, which shall be free and restricted, respectively, are designated as follows: Free percentage, 58 percent and restricted percentage, 42 percent.

Dated: November 2, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–22115 Filed 11–4–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AH60

Design Basis Threat

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern the requirements pertaining to design basis threat (DBT). The proposed rule would amend the Commission's regulations to, among other things, make generically applicable the security requirements previously imposed by the Commission's April 29, 2003 DBT orders, which applied to existing licensees, and redefine the level of security requirements necessary to ensure that the public health and safety and common defense and security are adequately protected. The proposed rule would revise the DBT requirements for radiological sabotage (applied to power reactors and Category I fuel cycle facilities), and theft or diversion of NRC-licensed Strategic Special Nuclear Material (SSNM) (applied to Category I fuel cycle facilities). The NRC has developed draft Regulatory Guides (RGs) that provide guidance to licensees concerning the DBT for radiological sabotage and theft and diversion. These draft RGs have limited distribution because they contain either safeguards or classified information. The specific details related to the threat, which contain both safeguards information (SGI) and classified information, are contained in adversary characteristics documents (ACDs) that are not publicly available. These documents include specific details of the attributes of the threat consistent with the requirements imposed in the April 29, 2003, DBT orders. Additionally, a Petition for Rulemaking (PRM–73–12), filed by the Committee to Bridge the Gap, was considered as part of this proposed rulemaking; the NRC's disposition of this petition is contained in this document.

DATES: Submit comments by January 23, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH60 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

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

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

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

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and

Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1462; e-mail: *tar@nrc.gov* or Mr. Richard Rasmussen, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–8380; e-mail: *rar@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The DBT requirements in 10 CFR 73.1(a) describe general adversary characteristics that designated licensees must defend against with high assurance. These NRC requirements include protection against radiological sabotage (generally applied to power reactors and Category I fuel cycle facilities) and theft or diversion of NRC-licensed SSNM (generally applied to Category I fuel cycle facilities). The DBTs are used by these licensees to form the basis for site-specific defensive strategies implemented through security plans, safeguards contingency plans, and guard training and qualification plans.

Following the terrorist attacks on September 11, 2001, the NRC conducted a thorough review of security to ensure that nuclear power plants and other licensed facilities continued to have effective security measures in place for the changing threat environment. In so doing, the NRC recognized that some elements of the DBTs required enhancement due to the escalation of the domestic threat level. After soliciting and receiving comments from Federal, State, local agencies, and industry stakeholders, the NRC imposed by order supplemental DBT requirements that contained additional detailed adversary characteristics. The Commission deliberated on the responsibilities of the local, State, and Federal governments to protect the nation, and the responsibility of the licensees to protect individual nuclear facilities, before reaching consensus on a reasonable approach to security in the April 29, 2003 DBT orders. After gaining experience under these orders over the past two years, the Commission believes that the attributes of the orders should be generically imposed on certain classes of licensees.

The Commission's decision was based on the analysis of intelligence information regarding the trends and capabilities of the potential adversaries and discussions with Federal, law enforcement, and intelligence community agencies. These enhanced adversary characteristics are reflective of the new threat environment. In general terms, DBTs are comprised of attributes selected from the overall threat environment. The ACDs set forth the specific details of the attributes of the DBTs. The DBT technical basis document contains a basis for the specific adversary characteristics. These supplemental documents contain safeguards and classified information that is distributed only to persons with authorized access and on a need-to-know basis. The NRC's DBT takes into consideration actual demonstrated adversary characteristics as well as pertinent intelligence information applicable to domestic threats and a determination as to those characteristics against which a private security force could reasonably be expected to provide protection.

The April 29, 2003 DBT orders required nuclear power reactors and Category I fuel cycle licensees to revise their physical security plans, security personnel training and qualification plans, and safeguards contingency plans to defend against the supplemental DBT requirements. The orders required licensees to make security enhancements such as increased patrols; augmented security forces and capabilities; additional security posts; additional physical barriers; vehicle checks at greater standoff distances; better coordination with law enforcement and military authorities; augmented security and emergency response training, equipment, and communication; and more restrictive site access controls for personnel, including expanded, expedited, and more thorough initial and follow-on screening of temporary and permanent workers. The NRC has reviewed and approved the revised security plans that were developed and submitted by power reactor and Category I fuel facility licensees in response to the April 29, 2003 orders.

II. Rulemaking Initiation

On July 19, 2004, the staff issued a memorandum entitled ''Status of Security-Related Rulemaking'' to inform the Commission of plans to close two longstanding security-related actions and replace them with a comprehensive rulemaking plan to modify physical protection requirements for power reactors. This memorandum described rulemaking efforts that were preempted by the terrorist activities of September 11, 2001, and summarized the security-related actions taken following the attack. In response to this memorandum, the Commission directed the staff in an August 23, 2004, Staff Requirements Memorandum (SRM), to forego the development of a rulemaking plan and provide a schedule for the completion of 10 CFR 73.1, 73.55, and Part 73 Appendix B rulemakings. The requested schedule was provided to the Commission by memorandum dated November 16, 2004.

III. Proposed Regulations

The principal objectives of the proposed rule are, among other things, to make generically applicable the security requirements previously imposed by the Commission's April 29, 2003 DBT orders, and to define in NRC regulations the level of security necessary to ensure adequate protection of the public health and safety and common defense and security.

The Commission continues to consider many factors in developing the proposed DBT and other security requirements. As directed by Congress under section 651(a) of the recently enacted Energy Policy Act of 2005, the NRC is giving consideration to the following 12 factors as part of this rulemaking to revise the design basis threats:

1. The events of September 11, 2001;
2. An assessment of physical, cyber, biochemical, and other terrorist threats;
3. The potential for attack on facilities by multiple coordinated teams of a large number of individuals;
4. The potential for assistance in an attack from several persons employed at the facility;
5. The potential for suicide attacks;
6. The potential for water-based and air-based threats;

7. The potential use of explosive devices of considerable size and other modern weaponry;

8. The potential for attacks by persons with a sophisticated knowledge of facility operations;

9. The potential for fires, especially fires of long duration;

10. The potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals; [1]

11. The adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and

12. The potential for theft and diversion of nuclear material from such facilities.

A number of these factors are already reflected in the text of the proposed rule. For example, the proposed rule would require protection against suicidal attackers, insiders, and waterborne threats. Some of these factors are not included in the proposed rule. For example, there is no provision in the proposed DBT rule for an attribute of air-based threats. The Commission invites and looks forward to public comment on the proposed rule provisions, as well as whether or how the 12 factors should be addressed in the DBT rule. The Commission will further consider and resolve any comments received in the final rule.

The proposed rule would also revise certain exemptions for independent spent fuel storage installations (ISFSIs). The current DBT rule exempts ISFSIs from the land vehicle transport and land vehicle bomb threats contained in §§ 73.1(a)(1)(i)(E) and (a)(1)(iii), respectively. These exemptions should no longer be retained because the Commission issued orders to ISFSIs on October 16, 2002, requiring ISFSIs to protect against these threats. The NRC evaluated the need to apply waterborne requirements to ISFSIs and concluded that other means in the proposed rule were sufficiently protective to preclude the need for specific requirements regarding waterborne threats. Consequently, an exemption from the waterborne threat has been added for ISFSIs in this proposed rule.

The proposed rule would also amend the exemption in the current § 73.1(a) for licensees subject to the provisions of § 73.20. The current rule exempts these licensees from the requirements to protect against vehicles transporting adversary personnel and equipment and the land vehicle bomb. The Commission has determined, however, that due to the current threat environment certain licensees subject to § 73.20 (Category I fuel cycle facilities) need to protect against such threats, so the exemption must be amended accordingly. The amended exemption would continue for other licensees described in 10 CFR 73.20 (e.g., fuel reprocessing plants licensed under Part 50).

The approach proposed in this rulemaking maintains a level of detail in the § 73.1(a) rule language that is generally comparable to the current regulation, while updating the general DBT attributes in a manner consistent with the insights gained from the application of supplemental security requirements imposed by the April 29, 2003, DBT orders. The result is a proposed rule with a level of detail that reflects all major features of the DBTs, yet avoids compromising licensee security by not publishing the specific tactical and operational capabilities of the DBT adversaries. The goal of this approach is to provide sufficient public notice of the upgrades to the DBTs, including the new modes of attack that facilities must be prepared to defend against, so that meaningful public input is possible regarding the proposed rule's scope and content.

The NRC recognizes that some stakeholders may expect more detail than is set forth in the current or proposed DBT regulations. However, the more detail that is made publicly available about the specific capabilities of the DBT adversaries, the greater the chance that potential adversaries could exploit that information. The disclosure of such details as the specific weapons, force size, ammunition, vehicles, and bomb sizes that licensees must be prepared to defend against could substantially assist an adversary in planning an attack.

On the other hand, it is important for the public to be informed of the types of attacks against which nuclear power plants and Category I fuel cycle facilities are required to defend. The public has a vital stake in the security of these facilities, as well as the right to meaningful comment when NRC proposes to amend its regulations. Understanding the general scope of the proposed DBT rule is necessary if the public is to exercise its right to meaningful comment and oversight of NRC regulations.

After carefully balancing these competing interests, the NRC arrived at the level of detail regarding the attributes of the DBT presented in the proposed rule. More specific details (e.g., specific weapons, ammunition, etc.) are consolidated in ACDs, which contain classified or safeguards information. The technical bases for the ACDs are derived largely from intelligence information, and also contain classified and safeguards information that cannot be publicly disclosed. These documents must be withheld from public disclosure and made available only on a need-to-know basis to those who otherwise qualify for access.

The ACDs may be updated from time to time as a result of the NRC's periodic threat reviews, which NRC has been conducting since 1979. Those threat assessments are performed in conjunction with the intelligence and law enforcement communities to identify changes in the threat environment which may in turn require adjustment of NRC security requirements. Future revisions to the ACDs would not require changes to the DBT regulations in § 73.1, provided the changes remain within the scope of the rule text.

The NRC consulted with Federal, State, and local agencies, and with industry stakeholders in developing the updated DBTs. This consultation involved analysis of intelligence information regarding the trends and capabilities of potential adversaries, and discussion with Federal, law enforcement, and intelligence community agencies. Public comments and suggestions received in response to PRM–73–12, also informed the NRC's development of this proposed rule. The resolution of PRM–73–12, which is being granted in part through this rulemaking, is more fully discussed in Section V of this notice.

The Commission concludes that the proposed amendments to § 73.1 will continue to ensure adequate protection of public health and safety and the common defense and security by requiring the secure use and management of radioactive materials. The revised DBTs represent the largest threats against which private sector facilities must be able to defend with high assurance. The proposed amendments to § 73.1 reflect requirements currently in place under existing NRC regulations and orders.

[1] Transportation of spent nuclear fuel is subject to separate regulatory requirements and public comments will be considered.

IV. Section-by-Section Analysis

The following table provides a comparison between the proposed rule text and the current rule text.

Old	New	Change
(a) Purpose. This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear materials used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft of special nuclear material. Licensees subject to the provision of §72.182, §72.212, §72.20, §73.50, and §73.60 are exempt from §73.1(a)(1)(i)(E) and §73.1(a)(1)(iii).	(a) Purpose. This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material. Licensees subject to the provisions of §73.20 (except for fuel cycle licensees authorized under part 70 of this chapter to received, acquire, possess, transfer, use, or deliver for transportation formula quantities of strategic special nuclear material), §73.50, and §73.60 are exempt from §73.1(a)(1)(i)(E), §73.1(a)(1)(iii), §73.1(a)(1)(iv), §73.1(a)(2)(iii) and §73.1(a)(2)(iv). Licensees subject to the provisions of §72.212, are exempt from §73.1(a)(1)(iv).	The proposed paragraph is modified to clarify that the DBTs are designed to protect against diversion in addition to theft of special nuclear material. The proposed exemptions would be updated based on the order requirements and conforming changes to other paragraphs of this part.
(1) Radiological sabotage. (i) A determined violent external assault, attack by stealth, or deceptive actions, of several persons with the following attributes, assistance and equipment:	(1) Radioloigcal sabotage. (i) A determined violence external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating as one or more teams, attacking from one or more entry points, with the following attributes, assistance and equipment:	The proposed paragraph adds new capabilities to the DBT including operation as one or more teams and attack from multiple entry points.
(1)(i)(A) Well-trained (including military training and skills) and dedicated individuals,	(1)(i)(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack,	The proposed paragraph would add to the DBT adversaries who are willing to kill or be killed and are knowledgeable about specific target selection.
(1)(i)(B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both,	(1)(i)(B) active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance. The reference to an individual would be removed and the paragraph reworded to provide flexibility in defining the scope of the inside threat.	
(1)(i)(C) suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy,	(1)(i)(C) suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long range accuracy,	The phrase ''up to and including'' was changed to ''including'' to provide flexibility in defining the range of weapons licensees must be able to defend against.
(1)(i)(D) hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards systems, and	(1)(i)(D) hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards systems, and	This description is not revised by the proposed rule.
(1)(i)(E) a four-wheel drive land vehicle used for transporting personnel and their hand-carried equipment to the proximity of vital areas, and	(1)(i)(E) land and water vehicles, which could be used for transporting personnel and their hand-carried equipment to the proximity of vital areas, and	The scope of vehicles licensees must defend against would be expanded to include water vehicles and a range of land vehicles beyond four-wheel drive vehicles.
(1)(ii) An internal threat of an insider, including an employee (in any position), and	(1)(ii) An internal threat, and	The current rule describes the internal threat as a threat posed by an individual. The language would be revised to provide flexibility in defining the scope of the internal threat without adding details that may be useful to an adversary.

Old	New	Change
(1)(iii) A four-wheel drive land vehicle bomb.	(1)(iii) A land vehicle bomb assault, which may be coordinated with an external assault, and	The proposed paragraph would be updated to reflect that licensees are required to protect against a wide range of land vehicles. A new mode of attack not previously part of the DBT would be added indicating that adversaries may coordinate a vehicle bomb assault with another external assault.
None	(1)(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault.	The proposed paragraph would add a new mode of attack not previously part of the DBT, that being a waterborne vehicle bomb assault. This paragraph also adds a coordinated attack concept.
(2) Theft or diversion of formula quantities of strategic special nuclear material. (i) A determined, violent, external assault, attack by stealth, or deceptive actions by a small group with the following attributes, assistance, and equipment:	(2) Theft or diversion of formula quantities of strategic special nuclear material. (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating as one or more teams, attacking from one or more entry points, with the following attributes, assistance and equipment:	The proposed paragraph would add new adversary capabilities to the DBT including operation as one or more teams and attack from multiple entry points.
(2)(i)(A) Well-trained (including military training and skills) and dedicated individuals;	(2)(i)(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack;	The proposed paragraph would add to the DBT adversaries who are willing to kill or be killed and are knowledgeable about specific target selection.
(2)(i)(B) Inside assistance that may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both;	(2)(i)(B) Active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance,	The reference to an individual would be removed and the paragraph reworded to provide flexibility in defining the scope of the inside threat.
(2)(i)(C) Suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;	(2)(i)(C) Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;	The phrase ''up to and including'' was changed to ''including'' to provide flexibility in defining the range of weapons licensees must be able to defend against.
(2)(i)(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system;	(2)(i)(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system;	This description is not revised by the proposed rule.
(2)(i)(E) Land vehicles used for transporting personnel and their hand-carried equipment; and	(2)(i)(E) Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment; and	The scope of vehicles licensees must defend against would be expanded to include water vehicles and a range of land vehicles beyond four-wheel drive vehicles.
(2)(i)(F) the ability to operate as two or more teams.	Deleted	This requirement would be included in § 73.1(a)(2)(i).
(2)(ii) An individual, including an employee (in any position), and (2)(iii) A conspiracy between individuals in any position who may have: (A) Access to and detailed knowledge of nuclear power plants or the facilities referred to in § 73.20(a), or (B) items that could facilitate theft of special nuclear material (e.g., small tools, substitute material, false documents, etc.), or both.	(2)(ii) An internal threat, and	The current rule describes the internal threat as a threat posed by an individual. The language would be revised to provide flexibility in defining the scope of the internal threat without adding details that may be useful to an adversary.
None	(2)(iii) A land vehicle bomb assault, which may be coordinated with an external assault, and	The proposed paragraph would be updated to reflect that licensees are required to protect against a wide range of land vehicles. A new mode of attack not previously part of the DBT would be added indicating that adversaries may coordinate a vehicle bomb assault with another external assault.
None	(2)(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault.	The proposed paragraph would add a new mode of attack not previously part of the DBT, that being a waterborne vehicle bomb assault. This coordinated attack concept is another upgrade to the current regulation.

Additional guidance concerning the adversary characteristics is located in the corresponding draft regulatory guides (radiological sabotage in DG–5017 and theft and diversion in DG–5018). These draft RGs contain either safeguards or classified information and are not publicly available.

V. Petition for Rulemaking (PRM–73–12)

As discussed above in this notice, the NRC staff reviewed PRM–73–12 to determine whether the regulations in Part 73 regarding the DBT should be amended in response to requests in PRM–73–12 and public comments received on the petition. PRM–73–12 was filed by the Committee to Bridge the Gap on July 23, 2004. The petition requests that the NRC amend its regulations to revise the DBT regulations (in terms of the numbers, teams, capabilities, planning, willingness to die and other characteristics of adversaries) to a level that encompasses, with a sufficient margin of safety, the terrorist capabilities evidenced by the attacks of September 11, 2001. The petition also requests that security plans, systems, inspections, and force-on-force exercises be revised in accordance with the amended DBT. Finally, the petition requests a requirement be added to Part 73 to construct shields against air attack (the shields are referred to as ''beamhenge'') which the petition asserts would enable nuclear power plants to withstand an air attack from a jumbo jet.

PRM–73–12 was published for public comment in the **Federal Register** on November 8, 2004 (69 FR 64690). The public comment period expired on January 24, 2005. There were 845 comments submitted on PRM–73–12, of which 528 were form letters. Many of the comments were submitted after the comment period expired; however, the staff reviewed and considered all of the comments. Comments were received from nine state attorneys general, approximately 20 public interest groups, a U.S. Congressman from Massachusetts, and six industry groups and licensees. In addition, two U.S. Senators and a U.S. Representative (all from New Jersey) requested an extension to the comment period. The bulk of the comments either supported the petition, requested a stronger DBT, or requested that NRC give consideration to the petition. All the comments from industry and licensees opposed the petition and indicated that the supplemental DBT requirements imposed (by order) to date were adequate.

Based on a review of PRM–73–12 public comments, the NRC staff prepared a summary of those comments in the PRM–73–12 comment summary table (ML053040061). The table does not list each individual comment. The staff has grouped the comments by topic and provided the NRC's response. A review of the table shows that although there were a large number of comments, the comments fell into a relatively small number of topics.

The table contains the NRC's responses to the issues raised by public comments, but the responses to comments do not include a detailed comparison of the differences between the current DBT requirements (as imposed by the April 29, 2003 orders) and the requests in PRM–73–12. Such a comparison could compromise security. The NRC's post-September 11, 2001, review of security requirements encompassed all the issues raised by the petitioner, and a number of the petitioner's requested changes to the DBT have been incorporated into the proposed DBT amendments as discussed below.

The NRC is partially granting PRM–73–12 by conducting this proposed rulemaking to revise the DBT requirements in § 73.1(a). Some of the requested changes in PRM–73–12 are reflected in the proposed rule text. These changes include the proposed requirements in §§ 73.1(a)(1)(i) and (a)(2)(i) that licensees be required to protect against one or more teams of adversaries operating from multiple entry points. PRM–73–12 also requested that the DBT regulation make clear that adversaries are willing to kill and be killed. This change is reflected in proposed §§ 73.1(a)(1)(i)(A) and (a)(2)(i)(A). The proposed rule would also require licensees to protect against waterborne threats, a wider range of land vehicles, and coordinated attacks. All of these features of the proposed rule grant requests made in PRM–73–12.

The NRC intends to defer action on the other requests in PRM–73–12, specifically those aspects of PRM 73–12 which deal with the defense of nuclear power plants against aircraft, and to address those issues as part of the final action on this proposed rule.

Federal and other governmental efforts to protect the nation from terrorist attacks by air have increased substantially since September 11, 2001. Those efforts already include a variety of measures such as enhanced airline passenger and baggage screening, strengthened cockpit doors, and the federal Air Marshals program. Federal law enforcement and intelligence agencies have increased efforts to identify potential aircraft-related threats before they can be carried out. Such improvements have already been exercised by the Department of Defense and the Federal Aviation Administration through responses to airspace violations near nuclear power plants that were subsequently determined not to be threats. These and other government-wide efforts have improved protection against air attacks on all industrial facilities, both nuclear and non-nuclear.

Following the September 11, 2001, attacks in New York, the Pentagon, and Pennsylvania, the NRC conducted assessments of the potential for and consequences of terrorists targeting a nuclear power plant for aircraft attack, the physical effects of such a strike, and compounding factors such as meteorology that would affect the impact of potential radioactive releases. Furthermore, the NRC required existing nuclear power plant licensees to develop and implement strategies to mitigate potential consequences in the unlikely event of an attack, including an aircraft crash into a nuclear power plant. For new nuclear power plants, the opportunity exists to develop designs that provide for enhanced protection against potential threats. The NRC staff will continue to review intelligence and threat reporting to recommend any appropriate modifications to the DBT or NRC requirements to mitigate air attacks.

PRM–73–12 also requests that nuclear power plants be required to defend against more than the number of attackers that carried out the September 11, 2001 attacks, and identifies specific weapons that nuclear power plants should be able to defend against. The Commission cannot comment publicly on the precise numbers of attackers or types of weapons that nuclear power plants are required to defend against under the proposed DBTs and ACDs for reasons stated earlier in this notice. However, the Commission has conducted a thorough review of security to continue to ensure that nuclear power plants and other licensed facilities have effective defensive capabilities and security measures in place given the changing threat environment. An important part of this review was the consideration of a terrorist attack similar to that which occurred on September 11, 2001. However, the DBT is based upon review and analysis of actual demonstrated adversary characteristics in a range of terrorist attacks, and a determination as to the attacks against which a private security force could reasonably be expected to defend.

In summary, the NRC grants PRM–73–12 in part by conducting this proposed rulemaking to revise the DBT requirements in § 73.1(a) to reflect certain specific requested changes contained in PRM–73–12 in the proposed rule text, and is deferring action on other requests in PRM–73–12, specifically those aspects of PRM–73–12 which deal with air-based attacks.

VI. Guidance

The NRC staff is preparing new regulatory guides, as listed below, to provide detailed guidance on the revised DBT requirements in proposed § 73.1. These guides are intended to assist current licensees in ensuring that their security plans meet requirements in the proposed rule, as well as future license applicants in the development of their security programs and plans. The new guidance incorporates the insights gained from applying the earlier guidance that was used to develop, review, and approve the site security plans that licensees put in place in response to the April 2003 orders. As such, this regulatory guidance is expected to be consistent with revised security measures at current licensees. The publication of the regulatory guides is planned to coincide with the publication of the final rule. The guides are described below.

1. Draft Regulatory Guide (DG–5017), ''Guidance for the Implementation of the Radiological Sabotage Design-Basis Threat (Safeguards).'' This regulatory guide will provide guidance to the industry on the radiological sabotage DBT. DG–5017 contains safeguards information and, therefore, is being withheld from public disclosure and distributed on a need-to-know basis to those who otherwise qualify for access.

2. Draft Regulatory Guide (DG–5018), ''Guidance for the Implementation of the Theft and Diversion Design-Basis Threat (Classified).'' This regulatory guide will provide guidance to the industry on the theft or diversion DBT. DG–5018 contains classified information and, therefore, is withheld from public disclosure and distributed only on a need to know basis to those who otherwise qualify for access.

VII. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act, as amended, the Commission is issuing the proposed rule to revise § 73.1 under one or more sections of 161 of the Atomic Energy Act of 1954 (AEA). Criminal penalties, as they apply to regulations in Part 73 are discussed in § 73.81.

VIII. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

IX. Availability of Documents

Some documents discussed in this rule are not available to the public. The following table indicates which documents are available to the public and how they may be obtained.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland 20852.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov*. These documents may be viewed and downloaded electronically via this Web site.

NRC's Electronic Reading Room (ERR). The NRC's electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

Document	PDR	Web	ERR
Environmental Assessment	X	X	ML053040039
Regulatory Analysis	X	X	ML053040013
Public Comments on PRM–73-12	X	X	ML053040061
Radiological Sabotage Adversary Characteristics document	no	no	no
Theft and Diversion Adversary Characteristics document	no	no	no
Technical Basis Document	no	no	no
Draft RG DG–5017 on Radiological Sabotage	no	no	no
Draft RG DG–5018 on Theft or Diversion	no	no	no
Memorandum: Status of Security-Related Rulemaking	X	X	ML041180532
Commission SRM dated August 23, 2004	X	X	ML042360548
Memorandum: Schedule for Part 73 Rulemakings	X	X	ML043060572
Letter to Petitioner	X	X	ML052920150
Commission SRM dated October 27, 2005	X	X	ML053000448

X. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' published on June 10, 1998 (63 FR 31883) directed that the Government's documents be in plain, clear, and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** caption of this notice.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government-unique standards. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified.

XII. Finding of No Significant Environmental Impact: Environmental Assessment: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality

of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation; availability of the environmental assessment is provided in Section IX. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XIII. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0002.

Public Protection Notification

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

XIV. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Availability of the regulatory analysis is provided in Section IX. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants and Category I fuel cycle facilities. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XVI. Backfit Analysis

The NRC has determined, pursuant to the exception in 10 CFR 50.109(a)(4)(iii), that a backfit analysis is unnecessary for this proposed rule. Section 50.109 states in pertinent part that a backfit analysis is not required if the Commission finds and declares with appropriate documented evaluation for its finding that a ''regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.'' The proposed rule would increase the security requirements currently prescribed in NRC regulations, and is necessary to protect nuclear facilities against potential terrorists. When the Commission imposed security enhancements by order in April 2003, it did so in response to an escalated domestic threat level. Since that time, the Commission has continued to monitor intelligence reports regarding plausible threats from terrorists currently facing the U.S. The Commission has also gained experience from implementing the order requirements and reviewing revised licensee security plans. The Commission has considered all of this information and finds that the security requirements previously imposed by DBT orders, which applied only to existing licensees, should be made generically applicable. The Commission further finds that the proposed rule would redefine the security requirements stated in existing NRC regulations, and is necessary to ensure that the public health and safety and common defense and security are adequately protected in the current, post-September 11, 2001, environment.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.1, paragraph (a) is revised to read as follows:

§ 73.1 Purpose and scope.

(a) Purpose. This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material. Licensees subject to the provisions of § 73.20 (except for fuel cycle licensees authorized under Part 70 of this chapter to receive, acquire, possess, transfer, use, or deliver for transportation formula quantities of strategic special nuclear material), § 73.50, and § 73.60 are exempt from § 73.1(a)(1)(i)(E), § 73.1(a)(1)(iii), § 73.1(a)(1)(iv), § 73.1(a)(2)(iii), and § 73.1(a)(2)(iv). Licensees subject to the provisions of § 72.212 are exempt from § 73.1(a)(1)(iv).

(1) *Radiological sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating as one or more teams, attacking from one or more entry points, with the following attributes, assistance and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack,

(B) Active (*e.g.*, facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (*e.g.*, provide information), or both, knowledgeable inside assistance,

(C) Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long range accuracy,

(D) Hand-carried equipment, including incapacitating agents and

explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, and

(E) Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment to the proximity of vital areas, and

(ii) An internal threat, and

(iii) A land vehicle bomb assault, which may be coordinated with an external assault, and

(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault.

(2) *Theft or diversion of formula quantities of strategic special nuclear material.* (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating as one or more teams, attacking from one or more entry points, with the following attributes, assistance and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack;

(B) Active (*e.g.*, facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (*e.g.*, provide information), or both, knowledgeable inside assistance,

(C) Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safe-guards system;

(E) Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment; and

(ii) An internal threat, and

(iii) A land vehicle bomb assault, which may be coordinated with an external assault, and

(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault.

Dated at Rockville, Maryland this 2nd day of November, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–22200 Filed 11–4–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2004–17005; Notice No. 05–12]

RIN 2120–AI17

Washington, DC Metropolitan Area Special Flight Rules Area; Reopening of Comment Period and Intent To Hold Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: In this action, the FAA reopens the comment period and announces its intention to hold a public meeting concerning the ''Washington, DC Metropolitan Area Special Flight Rules Area'' NPRM that was published August 4, 2005. In that document, the FAA proposed to codify current flight restrictions for certain aircraft operations in the Washington, DC Metropolitan Area. This reopening is in response to requests from Members of Congress and industry associations.

DATES: The comment period for the proposed rule published on August 4, 2005 (70 FR 45250) closed November 2, 2005 and is reopened until February 6, 2006. The date for the public meeting will be announced in a future document.

ADDRESSES: You may send comments, identified by docket number, using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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: Ellen Crum, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment 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 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We

may change this proposal in light of the comments we receive.

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

Sensitive Security Information

Do not file in the docket information that you consider to be sensitive security information. Send or deliver this information (identified as docket number FAA–2003–17005) directly to Edith V. Parish, Acting Manager, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783. You must mark information that you consider security-sensitive.

Under 14 CFR 11.35 (a), we will review comments as we receive them, before they are placed in the docket. If a comment contains sensitive security information, we remove it before placing the comment in the general docket.

Background

On August 4, 2005 (70 FR 45250), the FAA proposed to amend 14 CFR part 93 to permanently codify the temporary flight restrictions over the Washington, DC Metropolitan Area. The comment period closed November 2, 2005. The FAA has received requests from the U.S. House of Representatives Committee on Transportation and Infrastructure, the National Business Aviation Association, Inc. (NBAA), the Aircraft Owners and Pilots Association (AOPA), the General Aviation Manufacturers Association (GAMA), and the Secretary of Transportation of the Commonwealth of Virginia to extend the comment period and hold public meetings.

Today's Action

The FAA has determined that it is in the public interest to reopen the comment period for the proposed rule published on August 4, 2005 (70 FR 45250) until February 6, 2006 and hold a public meeting. The date, time, and location of this public meeting will be announced in a future **Federal Register** document.

Issued in Washington, DC, on November 3, 2005.

Edith V. Parish,

Acting Director, System Operations and Safety.

[FR Doc. 05–22261 Filed 11–3–05; 2:46 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 204 and 399

[Docket No. OST–03–15759]

RIN 2105–AD25

Actual Control of U.S. Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Department is seeking comments on a proposal to clarify policies that may be used during initial and continuing fitness reviews of U.S. carriers when citizenship is at issue. We propose to add a new section to 14 CFR part 399 that clarifies how the Department will interpret ''actual control'' of a U.S. air carrier during fitness reviews. This proposal will affect how we interpret the circumstances influencing a determination of ''actual control,'' allowing easier access to foreign capital for U.S. airlines. We are also proposing minor amendments to 14 CFR part 204 to reference the new section and update existing language in part 204.

DATES: Comments are due on or before January 6, 2006.

ADDRESSES: You may send comments identified by DMS Docket No. OST–03–15759 using 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.
- Federal eRulemaking Portal: *http://www.regulations.gov* Follow the instructions for submitting comments.
- Mail: Docket Operations, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading in 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 Supplementary Information for further information.

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: William M. Bertram, Chief, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–9721.

SUPPLEMENTARY INFORMATION: *Comments Invited:* The Department invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to any economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments will reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

Public Participation

The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledge page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received in any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the Department's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Background

Air carriers must have authority granted to them by the Department to operate in the United States as U.S. air carriers. Under 14 CFR 204.5,

certificated and commuter air carriers that undergo or propose to undergo a substantial change in operations, ownership, or management must submit certain updated fitness information to the Department.[1] Section 204.5(c) of our regulations specifies that, if such information is being filed in support of an application for new or amended certificate authority, it will be filed in the docket as part of a public proceeding. For example, a certificated or commuter air carrier must apply for new or amended authority if its existing authority is not adequate for the performance of its planned service (*e.g.*, if a carrier wishes to serve a new city-pair route in foreign scheduled air transportation, if a carrier holding all-cargo authority wishes to conduct passenger service, or if a carrier currently operating only small aircraft wishes to operate large aircraft). If the substantial change being proposed does not affect the carrier's authority to perform its service under its existing authority, then the information is reported directly to the Chief of the Air Carrier Fitness Division, and is reviewed without a public proceeding as part of an informal continuing fitness investigation. Substantial changes that may not require a carrier to apply for new or amended authority include changes in the carrier's ownership or management. The purpose of these informal reviews is to decide whether a more formal, public proceeding is warranted, and whether the carrier's authority should be modified, suspended, revoked, or subjected to an enforcement action. During a continuing fitness review, the Department's staff may examine the carrier's ownership structure, and determine whether the air carrier continues to satisfy all statutory citizenship tests and continues to be under the actual control of U.S. citizens.

A citizen of the United States is defined in 49 U.S.C. 40102(a)(15) as:

(A) An individual who is a citizen of the United States;

(B) A partnership each of whose partners is an individual who is a citizen of the United States; or

(C) A corporation or association organized under the laws of the United States or a state, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75% of the voting interest is owned or controlled by persons that are citizens of the United States.

To be licensed, an airline that is, or is owned by, a corporation must be under the ''actual control'' of U.S. citizens to meet or continue to meet the citizenship standard. For many years, the standard and scope was refined through administrative case law dating back to 1940, first by the Civil Aeronautics Board (CAB) and then, after the CAB's sunset in 1984, by the Department of Transportation.[2] In 2004, ''actual control'' was specifically codified in the statutory definition of a citizen of the United States reflecting Departmental precedent, but it remains for the Department to interpret that requirement.[3] As part of the fitness review, the Department reviews the totality of circumstances of an airline's organization, including its capital structure, management, and contractual relationships, to ensure its compliance with the ''actual control'' requirement before issuing an air carrier license, and thereafter as its circumstances change.

On March 4, 2003, the Inspector General of the U.S. Department of Transportation issued a letter in response to a request by the Chairman of the House Transportation and Infrastructure Committee to review the Department's procedures for making air carrier citizenship determinations in continuing fitness reviews, and to review the Department's consideration of a docketed proceeding then-pending before the Department (*In the matter of the citizenship of DHL Airways, Inc.,* Docket OST–2002–13089–32). In the letter, the Inspector General made two recommendations. First, the Department should publicly address the factors used to determine whether an air carrier is under the ''actual control'' of U.S. citizens. Second, the Department should consider modifying its procedures and regulations for reviewing an air carrier's citizenship status during a continuing fitness review.

1. Advance Notice of Proposed Rulemaking

On July 30, 2003, the Department published an ANPRM in the **Federal Register** (68 FR 44675–78) seeking comments on the two recommendations contained in the Inspector General's letter not directly related to the DHL case.

The Inspector General stated in his letter, ''There are seven factors that frequently recur in past orders of the Department addressing the issue of actual control. These factors, while known to Department and aviation attorneys, have not been delineated in any one public document. Good public policy would suggest that the Department address these and other factors in a document that is widely available.'' The seven factors cited were: (1) Control via supermajority or disproportionate voting rights; (2) negative control/power to veto; (3) buy-out clauses; (4) equity ownership; (5) significant contracts; (6) credit agreements/debt; and (7) family relationships/business relationships. We sought comments on whether there are other factors or criteria that the Department routinely considers in addition to those listed above. In doing so, however, we noted that the Department has repeatedly stated in decisions that citizenship determinations necessarily are made on a case-by-case basis because every case has its own unique set of circumstances, and no single list of factors or criteria could be exhaustive, due to the changing legal and market circumstances faced by carriers when organizing their corporate and financial structures.

The Inspector General further stated that ''[t]he informal process used for citizenship reviews can be beneficial when the issues are not complex or contentious by providing for open dialogue between the Department and carriers to resolve matters expeditiously.'' The Inspector General recommended that: ''for the future, we believe the Department should give consideration to a more transparent and formal process in complex and contentious cases.''

[1] 14 CFR 204.2(l) defines *substantial change in operations, ownership, or management* as including, but not limited to, the following events: ''(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations; (2) the filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws; (3) the acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and (4) a change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.''

[2] Past cases include *In the matter of the citizenship of DHL Airways, Inc. n/k/a ASTAR Air Cargo, Inc.,* Order 2004–5–10, issued May 13, 2004 at 8; *Acquisition of Northwest Airlines by Wings Holdings, Inc.,* Order 89–9–51, issued September 29, 1989, at 5; *Application of Discovery Airways, Inc.,* Order 89–12–41, issued December 22, 1989, at 10; *In the matter of USAir and British Airways,* Order 93–3–17, issued March 15, 1993, at 19; and *Application of North American Airlines, Inc.,* Order 89–11–8, issued November 6, 1989, at 6.

[3] See 49 U.S.C. 40102(a)(15), *as amended* by Vision 100—Century of Aviation Reauthorization Act, Public Law 108–176, 807, 117 Stat. 2490 (2004).

In the ANPRM, we asked for comments on the following questions:

(1) Is the Department's current informal, undocketed process for reviewing the citizenship of certificated and commuter air carriers following a substantial change in operations, ownership, or management sufficient to meet the statutory goals and requirements of evaluating a carrier's continuing fitness prior to any decision to take public action?

(2) Should air carriers proposing a substantial change in operations, ownership, or management that may affect their citizenship status be subject to a formal, public review of their citizenship, and if so, under what circumstances?

(3) What are the benefits and burdens, including time, effort, or financial resources expended, to generate, maintain, or provide information that would be subject to such a docketed public review? How would an air carrier's ability to obtain timely financing be affected?

(4) What are the advantages and disadvantages of retaining the current rule at 14 CFR 204.5 without revision?

(5) Should the Department establish separate procedures for handing complex, contentious, and controversial citizenship questions that arise in the context of continuing fitness reviews? If so, what procedures would be appropriate, and what standards should be used to designate such cases?

(6) Should the Department issue a public notice when it initiates and/or completes a citizenship determination in the context of a continuing fitness review? How would such notice impact an air carrier's business? What impact would such notice have on the willingness of an air carrier contemplating a future change in ownership, operations, and/or management to have candid discussions with the Department before formalizing any transaction?

(7) How should competition issues and business confidentiality issues be addressed in any change to the current procedures?

We have decided to respond to the Inspector General's concerns in three ways. First, as he suggested, we are publishing a more complete discussion of the citizenship and control factors, as well as a non-exclusive list of the criteria that have developed over time and that the Department has used in making citizenship and control determinations. The discussion is now available in the information packets *How to Become a Certificated Air Carrier* and *How to Become a Commuter Air Carrier* that can be downloaded by applicant carriers from the Assistant Secretary for Aviation and International Affair's Web site at *http://ostpxweb.ost.dot.gov/aviation/index.html.* Second, we are placing a separate discussion in a question and answer format on that web site. Third, we are proposing a Policy Statement about how we may interpret the actual control standard in application to an individual set of circumstances. As noted above, we are acting on a recommendation from the Inspector General to place this information in a central location, and have incorporated some commenter suggestions as mentioned below.

2. Comments to the ANPRM

Comments to the ANPRM were due by September 29, 2003. We received 12 total comments to the ANPRM from 11 commenters. We received comments from ABX Air, Inc. (''ABX''), Air Line Pilots Association, International (''ALPA''), American Airlines, Inc. (''American''), ASTAR Air Cargo, Inc. (''ASTAR''), TEM Enterprises, Inc. d/b/a Casino Express Airlines and Murray Air, Inc. (joint filing) (''Casino/Murray''), Delta Air Lines, Inc. (''Delta''), Federal Express Corporation (''FedEx''), United Air Lines, Inc. (''United''), United Parcel Service Co. (''UPS''), Dr. Dorothy Robyn and Stephen L. Gelband (joint filing) (''Robyn/Gelband''), and Barbara Sachau (''Sachau'').

Criteria for Determining Control

The commenters addressed the issues of whether the list of criteria as described in the Inspector General's letter should be codified in some form other than case precedents, and whether there are other factors or criteria that the Department routinely considers in making citizenship determinations that were not mentioned in the letter. In their comments, ABX, American, Delta, FedEx, United, and UPS stated that it would not be a good idea to codify the list in the regulations. ABX said that any list would hinder the Department's flexibility to address unique facts as the cases present themselves, an idea echoed in the comments of American and UPS. Delta commented that such a list would necessarily be suggestive of the most important factors while failing to be sufficiently comprehensive, and United commented that such a list could dictate the outcomes of certain investment and management structures, thereby limiting innovation and reactions to the dynamic aviation industry. FedEx commented that a significant body of precedent exists and there is no need to otherwise articulate it. Casino/Murray advocated codifying the list of criteria, stating that it would be both appropriate and helpful to publish the list in some form that would be readily available to the public, such as in a policy statement in part 399 of our regulations. ALPA commented that any list will serve only as a compilation of factors that have arisen in previous cases. Delta commented that it would have no objection to the Department publishing the list as *advisory* on an informal basis, such as on a Web site or other suitable location. UPS commented that the Department should make clear in any publication it may issue that no factor will be dispositive in the determination of a case.

FedEx, Robyn/Gelband, and UPS commented on other factors that we should consider in the preparation of any list for publication. FedEx suggested adding the foreign revenue test located in § 2710, Public Law 108–11. Applicable to air carriers applying for Department of Defense (DoD) airlift contracts, the provision states that a carrier would not be eligible for such a contract if more than 50% of its revenue came from a foreign source in the previous 3 years, and that foreign source, directly or indirectly, either owns a voting interest in the carrier or is owned by an agency or instrumentality of a foreign state. ABX responded to FedEx's comment in a supplemental filing, disputing the need to include the test when it only applies to DoD contracts and would break with longstanding Department precedent. Robyn/Gelband commented that any list should include the impact on competition, specifically the impact of bilateral relations with the country of which the foreign investor is a citizen and reciprocal market access. UPS suggested that the foreigner's power to cause reorganization of the carrier should be included in the list, because we already consider as a factor the foreigner's power to prevent reorganization.

3. Procedural Changes

We asked in the ANPRM for input on whether the Department should change its current informal, non-public process for evaluating citizenship in continuing fitness cases. Four commenters favored amending the regulations to allow for more public, formal procedures; seven commenters were opposed. Sachau commented that the public must be consulted on all matters, and that there should be a full public hearing. ALPA commented that the informal review process is inconsistent with the public review generally for fitness issues. The benefits of a public review of structural

changes to a carrier's ownership outweigh potential burdens that could arise. ALPA suggested that provisions of part 300, subpart B, could be revised to accommodate continuing fitness reviews. FedEx believes that the process should be open and transparent, and that the Department should publish notice of every filing under § 204.5. Because most carriers are public companies, the carriers would be required to make similar filings with the SEC. Public reviews of the carrier's citizenship would begin upon request, and all relevant information would be placed in the docket. FedEx commented that third parties should be given the opportunity to show a case needs more than notice-and-comment, including more formal adjudicatory methods. UPS made three specific recommendations: (1) There should be public notice of the review in the **Federal Register**; (2) included in the notice would be a general summary of the facts omitting any confidential information; and (3) third parties should be afforded the opportunity to comment and review the materials under the Department's Rule 12 confidentiality requirements.

ABX, opposed to changing the regulations, commented that the Department experts were well-qualified to complete reviews without formal proceedings involving third parties. More public procedures would invite anticompetitive behavior in an effort to thwart market forces. American believes that the current approach is adequate provided the Department has the discretion to establish more formal procedures when the situation arises. ASTAR also opposed changing the regulations, and stated that the informal process allows for an open exchange of information between the Department and the carrier. Like ABX's comment, ASTAR stated that more public proceedings would invite ''anticompetitive mischief.'' Delta commented that it would be unnecessarily burdensome to promulgate a new set of formal procedures, and would hamper the Department's flexibility in resolving cases. Casino/Murray stated that the continuing fitness review process was not a mechanical exercise applying statutory formulas, but is flexible and the decisions are made subjectively. They further stated that the current system affords the Department the ability to use other procedures, and, similar to other commenters, noted that any public process could be subject to abuse by competitors. Robyn/Gelband pointed to the ASTAR hearing as an example of why the process should not be changed. They stated that there is no statutory requirement for public reviews of continuing fitness, and many cases may not be appropriate to review in a formal setting. Finally, United commented that the current process gives the Department the flexibility needed to accurately evaluate changes to a carrier's structure, and pointed out that the ASTAR case was an anomaly.

Four commenters also made specific comments regarding applying Rule 12 confidentiality to continuing fitness reviews if the process were to become more public. ABX commented that reviews often involve highly sensitive documents, and they should not be made available to third parties for potentially ''illegitimate, anticompetitive attacks.'' ABX commented that the Department of Justice does not open up Hart-Scott-Rodino reviews for public commentary. ASTAR commented that permitting third parties to review confidential materials would stifle the open exchange of information with the Department, because currently carriers feel safe in knowing that competitors do not have access to their highly confidential documents. Casino/Murray stated that Rule 12 is an option, but using it would still create a situation where a carrier's business relationships could be dangerously impaired at a time when the carrier is vulnerable. UPS commented that the Department should allow third parties to review documents under Rule 12 as part of a more public process.

Proposed Amendments

Continuing Fitness Procedures

As many of the commenters noted, the Department has various means at its disposal to initiate more formal proceedings when we believe such procedures to be appropriate while conducting a continuing fitness review. Requiring public notification every time there is a citizenship question resulting from a substantial change in ownership will not only dampen our ability to obtain confidential information and resolve issues informally with the carrier before a proposed transaction is finalized, but also may serve to deter investment or ownership changes because of the uncertainty surrounding a timely decision by the Department. In addition, such procedures could become extremely burdensome on the affected air carriers. For these reasons, we propose not to expand upon or be more specific as to the process used, but to continue to use those means already available. We invite public comment on our proposed decision here not to change our current processes in these matters.

''Actual Control'' in Fitness Determinations

We have decided that this proposed rulemaking should consider whether the Department's interpretation of ''actual control'' should be changed to reflect the substantial structural changes that have taken place in global financial markets. This proposal is consistent with our obligation to foster a safe, healthy, and competitive airline industry that will remain capable of supporting U.S. economic growth by meeting the public's transportation needs.[4]

So that the U.S. air transportation industry can continue to compete and be a leader in the ever-growing global economy, there needs to be enhanced access to worldwide financial resources. Accordingly, we propose to adapt our interpretation of how this private foreign capitalization affects the ''actual control'' of U.S. airlines to reflect these new realties.

U.S. aviation policy since deregulation has been to continue to reduce governmental intrusion in commercial decision-making by airlines, and to recognize and accommodate changes in the marketplace. This policy has been successful in areas such as pricing, route selection, fleet acquisition, and marketing, with positive consequences to many aspects of U.S. carrier economic activity. Airlines now provide seamless, end-to-end service through global systems that depend upon webs of contractual networks among carriers, distribution companies, and service providers. These changes have enabled U.S. airlines to compete more effectively in domestic and international markets.

Moreover, capital markets have evolved and now offer pools of highly mobile capital on a global basis. Innovations in the use of hedge funds, new forms of aircraft financing, and the growing role of international aircraft leasing companies have changed the nature of airline financing, even within the existing regulatory framework. Globalization has redefined the capital marketplace, and driven decisions regarding airline operations. Any regulatory impediments to this crucial access face a heavy burden of justification.

With deregulation, the Federal government withdrew restrictions in most economic areas of airline operations, including the areas of domestic pricing and entry. This policy

[4] 49 U.S.C. 40101(a), (e).

has produced enormous public benefits by helping the aviation industry to grow and compete effectively in both domestic and international markets. Airlines are now free to enter and exit domestic markets based on their own assessment of economic value and are free to adjust fares to reflect competitive pressures. The Department has also aggressively sought to extend these principles to international markets. Today, the U.S. has open-skies aviation relationships with more than 70 other countries, permitting airlines of both nations much of the same independence from government restrictions in their international operations that U.S. carriers have long enjoyed domestically.

U.S. carriers function in a virtually seamless global environment in virtually every aspect of their operations. However, an interpretation of ''actual control'' that does not recognize the global and structural changes in international finance and thereby take into account new avenues for investment, potentially excludes billions of dollars of foreign investment from airline capitalization sources. Reducing unnecessary regulatory obstacles to the use of cross-border investment will allow U.S. carriers to become more efficient economically, and allow them to continue to be a major presence in the global aviation marketplace. In some cases, foreign citizens have been unwilling to invest—either in the form of debt or equity—without certain protections commonplace in the financial world. New or expansion-seeking U.S. airlines in this situation have been either precluded from entering the U.S. market or forced to engage in costly and time-consuming restructurings to facilitate the investment.

These limitations and the related uncertainty also restrict the benefits of Open Skies agreements and of statutory deregulation. The industry's ongoing financial difficulties highlight the need to ensure that our actual control policies do not unnecessarily constrain aviation access to capital. Since the year 2000, the U.S. scheduled passenger airline industry has lost nearly $30 billion, an amount equivalent to roughly one-third of the aviation industry's total annual revenue. Since 2000, more than 100,000 airline employees have lost their jobs. Four major air carriers and several other national air carriers have been operating under Chapter 11 bankruptcy protection and have struggled to find the capital necessary to enable them to exit Chapter 11 protection. The large network air carriers continue to lose hundreds of millions of dollars every quarter. Such circumstances result in reductions in benefits that could be brought to travelers within the United States, as well as between the U.S. and Open Skies countries.

Any refinement to and our articulation of our interpretation of the ''actual control'' test as it currently exists in precedent and practice, however, must address and satisfy the following issues. First, it must provide guidance to the industry on future transactions. Second, it must allow globalization to take its course and permit the aviation industry to evolve with greater flexibility and more financing options. Third, it must foster robust partnerships with other nations, removing regulatory obstacles to permit the flourishing of a dynamic aviation industry. Fourth, it must come to terms with and adequately address anomalous cases that recently have been brought before the Department. Finally, it must continue to protect vital U.S. interests, such as the Civil Reserve Air Fleet Program, and security and safety policies. We are seeking to address these concerns with proposed language in 14 CFR part 399. By refining and articulating our interpretation of the actual control requirement, we will ensure that we are effectively meeting our market-oriented statutory objectives, while promoting aviation policies that advance those objectives, and the future needs of the aviation industry and its consumers.

We believe this proposed rulemaking should consider whether the Department's interpretation of ''actual control'' should be changed to reflect substantial structural changes that have taken place in global financial markets, taking into account whether there is reciprocity for U.S. investment and an Open Skies agreement governs aviation relations between the United States and the home country of a foreign investor, or any other relevant international legal obligations. This proposal is consistent with our obligation to foster a safe, healthy, and competitive airline industry that will remain capable of supporting U.S. economic growth by meeting the public's transportation needs, while retaining regulatory control over those areas within the appropriate realm of government oversight.[5]

We are proposing to place this guidance in 14 CFR part 399, which is reserved for general policy statements. This provision is not intended to be procedural, but to provide guidance to air carriers when submitting information to the Department for a fitness determination.

We tentatively find that our interpretation of the actual control test has failed to keep pace with changes in the global economy and evolving financial and operational realities in the airline industry itself, to the detriment of U.S. carriers. In view of the increasingly global character of finance and transportation, two things need to be done: U.S. policy must be more receptive to foreign investment, and broad guidelines need to be published to attract that investment, while at the same time protecting those areas of airline operations where there currently remains significant government involvement or regulation. We propose to adapt our interpretation of how foreign capitalization affects the ''actual control'' of U.S. airlines to reflect the new realities of globalization in the airline and financial industries. With this new guidance, we are striving to alleviate concerns that air carriers are being barred from a significant source of potential capital. In granting greater access to global capital, we are continuing our policy of allowing the market to operate with minimal regulation. We are proposing to refine and articulate our policy in an effort to provide guidance to air carriers with questions concerning the Department's interpretation of actual control.

Carriers require significant capital investments in facilities, technology, and a variety of commercial arrangements. In their efforts to meet these challenges, U.S. air carriers should have the broadest access to the global capital markets permitted by law, so long as such access does not impinge on those areas of airline operations where there currently remains significant government involvement or regulation. Furthermore, new U.S. air carriers seeking to enter the market should similarly be able to obtain the financial capital necessary to launch their businesses.[6] We tentatively do not believe that ''actual control'' should be interpreted in a way that needlessly restricts the commercial opportunities of U.S. air carriers and their ability to compete. In the context of several recent cases, where carriers have proposed using new cross-border financing vehicles, we have reviewed our policy and have begun to revise it to account for the ever-changing and increasingly liberalized financial markets. One such case is our recent decision regarding the Hawaiian Airlines reorganization.[7] It is

[5] 49 U.S.C. 40101(a), (e).

[6] *See* 49 U.S.C. 40101(a)(13) (encouraging new and small carriers).

[7] *See* Conclusions of the Department of Transportation regarding the citizenship of

Continued

a responsibility of the Department to ensure that the interpretation and application of its statutory obligations do not inadvertently or unnecessarily restrict access to the international capital markets by U.S. air carriers and prevent them from effectively competing in the global marketplace.[8]

We have refined the standard used in determining actual control in the past by *ad hoc* adjudications to reflect changing industry and financial circumstances. For example, in the *Northwest/KLM case* we said,

> During the course of these [citizenship] assessments, we have seen the complexity and international makeup of these arrangements increase, new financial instruments emerge, and the interrelationships of these new instruments grow. Based on that experience, we have reexamined our application of the control test in order to reflect more accurately today's complex, global corporate and financial environment, consistent with the requirement for U.S. citizen control. Specifically, we have reviewed the relationship between voting equity, on the one hand, and nonvoting equity and debt, on the other.[9]

A key issue in the liberalization of our control standard is whether to also consider circumstances that apply to certain foreign interests, but not to others. We believe that several considerations militate in favor of doing so—specifically, more latitude with respect to foreign investment should be allowed for a foreign interest whose homeland has both an Open Skies relationship with the U.S. and extends reciprocal investment opportunities with respect to its own airlines to U.S. sources of capital.[10] By this proposal, we are proposing to reduce substantially the significance, for purposes of determining citizenship, of foreign influence over many purely economic decisions, such as choice of markets, type of equipment, and rate-setting. We think it generally inappropriate to extend such latitude to nationals of countries that resist similar openness in access to aviation markets and in investment opportunities in their own airlines. Section 40101(a)(6) of our statute explicitly directs us to emphasize, generally, competition and access to capital. Among the policy factors we consider is ''placing maximum reliance on competitive market forces * * * to encourage efficient and well-managed air carriers to earn adequate profits and attract capital * * *.'' [11] Moreover, just as the United States has certain vital interests that we cannot permit to be compromised by control by foreign interests, such as national security, we also have a basic duty to ensure that our airlines, and indirectly consumers, are not placed at an unfair competitive disadvantage by extending benefits to foreign interests where such benefits are not available to U.S. interests abroad. That would be both unwise and contrary to the purpose and spirit of our statutory policy goals—to recognize and encourage open international markets. We will, of course, also consider any relevant U.S. international legal obligations (*see* 49 U.S.C. 40105(b)).

The law requires U.S. control of U.S.-flag airlines. This has not changed. We do not propose to allow ''actual control'' to shift to foreign hands. We do propose to ensure that the application of an ''actual control'' standard results in U.S. citizen control being exercised in those areas of airline operations where there currently remains significant governmental involvement or regulation. Moreover, we want to ensure that the test is not applied so broadly so as to unnecessarily inhibit U.S. carriers' access to the global capital market.

Our proposal would not affect the objective statutory requirements that a corporation must satisfy to qualify as a U.S. citizen, including the requirements that it be organized under the law of a U.S. jurisdiction; that 75 percent of the voting interest be owned or controlled by U.S. citizens; and that the President and two-thirds of the managing officers and directors be U.S. citizens. These standards are mandated by law and shall continue to be rigorously enforced, unless and until Congress changes them.

In considering what areas of airline structure and finance should remain under the existing rubric of ''actual control'' we are mindful of certain important objectives. The first is the requirement that any U.S. carrier must maintain vigorous compliance with safety and security requirements. Similarly, U.S. carriers must be able to continue to incur and honor obligations made directly to the U.S. Government, in particular the Civil Reserve Air Fleet program administered by the U.S. Department of Defense. These are areas in which, despite economic deregulation, there continues to be significant Federal government regulation and involvement.[12]

This proposal also retains the requirement that U.S. citizens have control (*i.e.*, the ability to make decisions that are not subject to substantial influence by foreign interests) over the creation and amendment of the organizational documents (such as the charter, certificate of incorporation and by-laws, and/or membership agreement) of the governing entity. This, of course, does not mean that the actual draftsman in a law firm or corporate legal department need be a U.S. citizen. Rather, such ''organic'' documents must clearly reflect, by both genesis and content, initial and continued actual control by U.S. citizens. Foreign citizens may hold rights essential to protect their financial interests—for example, provisions requiring concurrence before a company may enter bankruptcy or be dissolved—but the fundamental organization of the company must remain in U.S. citizen hands.

With these considerations in mind, we propose a policy statement setting forth the criteria that will be used to determine whether an air carrier is under the ''actual control'' of U.S. citizens.

With this refinement, responsibility for corporate documents and for policies and procedures related to safety, to security, and to CRAF must still be under the control of U.S. citizens to the extent that they are today. This approach will allow U.S. airlines to benefit from increased access to the foreign capital markets while ensuring that U.S. citizens continue to exert control in areas where significant government regulation and oversight remains.

We recognize that practitioners will need guidance on the implementation of

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Hawaiian Airlines, *available* at Issues and Events, *at http://ostpxweb.dot.gov/aviation/index.html.*

[8] *See* 49 U.S.C. 40101(a)(6)(B) (placing maximum reliance on competitive market forces to attract capital); 49 U.S.C. 40101(a)(12) (encouraging, developing and maintaining an air transportation system relying on actual and potential competition); 49 U.S.C. 40101(a)(13) (encouraging entry by new and existing carriers); 49 U.S.C. 40101(a)(14) (promoting, encouraging, and developing civil aeronautics as a viable, privately owned industry); 49 U.S.C. 40101(a)(15) (strengthening competitive position of U.S. carriers to ensure parity with foreign carriers).

[9] *In the Matter of the Acquisition of Northwest Airlines, Inc. by Wings Holdings, Inc.*, Order Modifying Conditions, Order 91–1–41 (Jan. 23, 1991), at 9.

[10] *See* 49 U.S.C. 40101(a)(15)(emphasizing U.S. carriers' ability to compete with foreign carriers). The law directs us to consider relevant foreign laws and requirements in carrying out our regulatory responsibilities. 49 U.S.C. 40105(b)(B).

[11] By the approach we are proposing here, we seek to balance and promote these considerations. With regard to international transportation, we are further exhorted to negotiate arrangements that provide for ''strengthening the competitive position of air carriers to ensure at least equality with foreign air carriers * * *.'' *Id.,* § 40101(e)(1). It is in keeping with our goals here to extend the benefits of this liberalization to countries that support this policy, but not to those that resist it.

[12] *See* 49 U.S.C. 40101(a)(1)–(3)(mandating safety as the highest priority) and § 40101(a)(7)(mandating regulatory system responsive to the needs of the national defense).

this policy in the context of actual cases, and we encourage consultation with the Department before any irrevocable decisions are made, as is customarily done now. We believe, however, that examples of how the new policy would apply may be useful. In offering such examples, we caution as always that no ''template'' is possible, and that each case will continue to be examined on its own unique merits.

In one case, foreign interest F, a citizen of an Open-Skies partner, will own an interest in U.S. air carrier A, including up to 25% of the voting stock. Two of A's seven directors will represent F, and three of A's twelve senior management officials will be nominated by F, so that there is compliance with the statute's numerical requirements. One of these F nominees will be in charge of the airline's day-to-day operations, and another will head a committee whose responsibility is setting market entry strategy; both will have influence in the purchase of aircraft. In the past, such responsibilities would have raised actual control issues. Under the proposed policy they would not, absent any other indicia of control, such as control over matters having an impact on CRAF participation, safety, security, by-laws or organizational documents.

In a second example, foreign interest X, also a citizen of an Open-Skies partner, would have similar participation in U.S. air carrier B. In contrast to the first example, however, X's homeland declines to extend reciprocal investment opportunities to U.S. air carriers and other U.S. interests, and there are no other relevant international legal obligations. X and B would therefore be subject to our traditional control analysis, including the question of unacceptable influence by officers nominated by X.

We invite comments on our proposed policy statement on foreign investment in U.S. air carriers. Among the specific issues that we are interested in receiving comments on is whether reciprocal access to investment in other countries' airlines should be required in order to take advantage of the revised interpretation of ''actual control.''

Part 204 Modifications

In addition to the policy language we are proposing, we are also proposing minor changes to Part 204 that will correct typographical errors and update sections in compliance with the new statute.

In § 204.1, we propose to add a sentence that will reference the new part 399 language so that air carriers will be directed to the new policy. In § 204.2, we propose to amend the definition of ''citizen of the United States'' to mirror the language that is now contained in 49 U.S.C. 40102(a)(15). The definition in the statute was amended by Congress in 2004 to include the phrase ''which is under the actual control of citizen of the United States'' in the part of the definition concerning corporations. We believe that the regulations should mirror the text of the statute as it is currently written. Finally, we are also proposing minor changes to § 204.5 that will clarify language in paragraph (a)(2); delete a typographical error in paragraph (b); revise the address in paragraph (c); and add a new paragraph (d) that replaces the last sentence of paragraph (c).

We believe that these amendments to part 204 will make the regulations easier understood by air carriers consulting the sections while submitting information to the Department.

Rulemaking Analyses and Notices

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

Executive Order 12866, Regulatory Planning and Review, directs the Department to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this rulemaking indicates that its negative economic impact is minimal because the rule will not impose any new costs on the affected certificated and commuter air carriers. This rulemaking is considered significant under DOT Policies and Procedures and E.O. 12866 because of public interest. It was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires federal agencies, as part of each proposed rule, to consider regulatory alternatives that minimize the impact on small entities while achieving the objectives of the rulemaking. This proposed rule clarifies and codifies the Department's practice concerning its interpretation of ''actual control'' in determining air carrier fitness/citizenship to receive or retain a certificate of public convenience and necessity or commuter authority. We certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessments

The Trade Agreement Act of 1979 prohibits federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that U.S. standards be compatible. The Department has assessed the potential effect of this rulemaking and has determined that it will have no effect on any trade-sensitive activity.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the Department's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The Department has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1955 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This proposal does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255). This proposed rule does not have a substantial direct effect on, or significant federalism implications for the States, nor would it limit the policymaking discretion of the States.

This proposed rule would not directly preempt any State law or regulation, nor impose burdens on the States. This

action would not have a significant effect on the States' ability to execute traditional State governmental functions. The agency has therefore determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires federal agencies to obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulation. The agency has determined that the proposed rule would not impose any additional requirements, but rather serves to codify our existing procedures. Thus, there is no change in the paperwork collection as currently exists.

List of Subjects

14 CFR Part 204

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

For the reasons stated in the preamble, the Department proposes to amend 14 CFR part 204 and 14 CFR part 399 as set forth below:

PART 204—DATA TO SUPPORT FITNESS DETERMINATIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 417.

2. Revise § 204.1 to read as follows:

§ 204.1 Purpose.

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible place, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority. See § 399.88 for policy statements concerning ''actual control'' of air carriers.

3. Revise § 204.2(c)(3) to read as follows:

§ 204.2 Definitions.

* * * * *

(c) *Citizen of the United States* means:

* * * * *

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

* * * * *

4. Amend § 204.5 as follows:

A. Revise paragraph (a)(2) to read as set forth below;

B. Amend paragraph (b) to remove the ''s'' after ''Carrier'' in the third sentence in the reference to ''Air Carrier Fitness Division'';

C. Revise paragraph (c) to read as set forth below; and

D. Add a new paragraph (d) before the OMB control number to read as set forth below.

The revisions read as follows:

§ 204.5 Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership, or management.

(a) * * *

(2) The change substantially alters the factors upon which its latest fitness finding is based, even if no new authority is required.

* * * * *

(c) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to Docket Operations, U.S. Department of Transportation, 400 Seventh Street, SW., PL–401, Washington, DC 20590.

(d) Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, management, or ownership, including changes that may affect the air carrier's citizenship, shall be addressed to the Chief, Air Carrier Fitness Division, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

* * * * *

PART 399—STATEMENTS OF GENERAL POLICY

5. The authority citation for Part 399 continues to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

6. Add a new § 399.88 to read as set forth below:

§ 399.88 Actual control of U.S. air carriers.

(a) *Applicability.* This policy shall apply to all direct air carriers submitting information to the Air Carrier Fitness Division under part 204 of this title, with respect to its status as a ''Citizen of the United States'' as defined in 49 U.S.C. 40102(a)(15), of the Act. This policy shall only apply to the interpretation of ''actual control'' contained in 49 U.S.C. 40102(a)(15)(C) in determining air carrier fitness/citizenship to receive or retain a certificate of public convenience and necessity.

(b) *Policy.* In cases where there is significant involvement in investment by non-U.S. citizens and either where their home country does not deny citizens of the United States reciprocal access to investment in their carriers and does not deny U.S. carriers full and fair access to their air services market, as evidenced by an Open Skies agreement, or where it is otherwise appropriate to ensure consistency with U.S. international legal obligations, the Department will consider the following when determining whether U.S. citizens are in ''actual control'' of the carrier:

(1) All necessary organizational documentation, including such documents as charter of incorporation, certificate of incorporation, by-laws, membership agreements, stockholder agreements, and other documents of similar nature. The documents will be reviewed to determine whether U.S. citizens have and will in fact retain actual control of the air carrier through such documents.

(2) The carrier's operational plans and actual operations to determine whether U.S. citizens have actual control with respect to:

(A) Decisions whether to make and or continue Civil Reserve Air Fleet (CRAF) commitments, and, once made, the implementation of such commitments with the Department of Defense;

(B) Carrier policies and implementation with respect to transportation security requirements specified by the Transportation Security Administration; and

(C) Carrier policies and implementation with respect to safety requirements specified by the Federal Aviation Administration.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–22056 Filed 11–3–05; 8:58 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 26, 53, 55, 156, 157, and 301

[REG–144898–04]

RIN 1545–BE62

Extension of Time for Filing Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations relating to the simplification of procedures for automatic extensions of time to file certain returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by February 6, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144898–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 4 pm to: CC:PA:LPD:PR (REG–144898–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–144898–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Allen D. Madison, (202) 622–4940; concerning submissions of comments and requests for a public hearing, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 1, 25, 26, 53, 55, 156, 157, and 301 relating to section 6081. The temporary regulations allow taxpayers required to file an individual income tax return an automatic six-month extension if taxpayers submit an application on Form 4868, ''Application for Automatic Extension of Time To File a U.S. Individual Income Tax Return.'' The temporary regulations also allow taxpayers who previously submitted three-month extension requests on Form 8736, ''Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts'' and requests for additional three-month extensions on Form 8800, ''Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts,'' an automatic six-month extension of time to file if an application is submitted on Form 7004, ''Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns.''

The six-month automatic extension of time to file set forth in these temporary regulations applies to returns of pass-through entities, e.g., Form 1065 for partnerships. The Treasury Department and the IRS recognize that because the six-month automatic extension is available for returns of pass-through entities, some taxpayers may not receive information returns from the pass-through entities that they need in order to complete their own income tax returns before those returns are due. For example, an individual income taxpayer with a six-month extension of time to October 15 to file the Form 1040 may not receive a Schedule K–1 from a partnership in which the taxpayer holds an interest until after the partnership files its Form 1065 on its extended due date of October 15. Similarly, a C-corporation with a six-month extension to September 15 to file its Form 1120 may not receive a Schedule K–1 from a calendar year partnership in which it holds an interest until as much as 30 days after its return is due if the partnership files its Form 1065 and sends out the Schedule K–1s on its extended due date of October 15th. This filing anomaly existed under prior regulations when the pass-through entity received an extension of time to file to a date on or after the extended due date for the pass-through interest holder, but the automatic six-month extension in this regulation may cause this to happen with more frequency.

Because of this filing anomaly, the availability of a six-month extension of time to file for pass-through entities may result in taxpayers filing an increased number of amended income tax returns. Therefore, it may be appropriate for pass-through entities to have a shorter extension period than their partners or shareholders. The Treasury Department and the IRS request comments on whether a shorter extension of time to file for pass-through entities might reduce overall taxpayer burden. Please follow the instructions in the ''Comments and Requests for a Public Hearing'' portion of this preamble. In order to minimize the burden that might be imposed as a result of this filing anomaly, the Treasury Department and the IRS encourage pass-through entities that request an extension of time to file to minimize the impact that such extension might have on their partners' or members' ability to timely file (with an extension) their own tax returns.

The temporary regulations also provide that taxpayers that requested additional time to file certain excise, income, information, and other returns by submitting Form 2758, ''Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns,'' may now request an automatic six-month extension of time to file by filing Form 7004.

The temporary regulations also allow administrators and sponsors of employee benefit plans subject to Employee Retirement Income Security Act of 1974 (ERISA) to report information concerning the plans and direct entities requesting an extension to use Form 5558, ''Application for Extension of Time To File Certain Employee Plan Returns,'' for an automatic two and one-half-month extension of time to file.

The temporary regulations also allow donors who do not request an extension of time to file an income tax return to request an automatic six-month extension of time to file Form 709, ''United States Gift (and Generation-Skipping Transfer) Tax Return'' by filing Form 8892, ''Payment of Gift/GST Tax and/or Application for Extension of Time to File Form 709.''

The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed

rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Tracey B. Leibowitz, of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 157

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 26, 53, 55, 156, 157, and 301 are proposed to be amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.6081–1 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 1.6081–1 Extension of time for filing returns.

* * * * *

(b) * * *

(1) *In general.* A taxpayer desiring an extension of the time for filing a return, statement, or other document shall submit an application for extension on or before the due date of such return, statement, or other document. Except as provided in paragraph (b)(3) of this section and paragraph (b) of § 301.6091–1 of this chapter (relating to hand-carried documents), the taxpayer should make the application for extension to the internal revenue officer with whom such return, statement, or other document is required to be filed. The application must be in writing, signed by the taxpayer or his duly authorized agent, and must clearly set forth—

(i) The particular tax return, information return, statement, or other document, including the taxable year or period thereof, for which the taxpayer requests an extension, and

(ii) An explanation of the reasons for requesting the extension to aid the internal revenue officer in determining whether to grant the request.

* * * * *

(5) *Form of application.* Taxpayers may apply for an extension of the time for filing a return, statement, or other document in a letter that includes the information required by paragraph (b)(3) of this section. In the case of an individual income tax return on Form 1040 series, however, taxpayers should apply for an extension of the time for filing in accordance with § 1.6081–4 of this chapter.

* * * * *

Par. 3. Section 1.6081–2 is added to read as follows:

§ 1.6081–2 Automatic extension of time to file certain returns filed by partnerships.

[The text of proposed § 1.6081–2 is the same as the text of § 1.6081–2T published elsewhere in this issue of the **Federal Register**].

Par. 4. In § 1.6081–3, paragraph (a)(1) is revised to read as follows:

§ 1.6081–3 Automatic extension of time for filing corporation income tax returns.

(a) * * *

(1) [The text of proposed § 1.6081–3(a)(1) is the same as the text of § 1.6081–3T(a)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 5. Section 1.6081–4 is added to read as follows:

§ 1.6081–4 Automatic extension of time for filing individual income tax return.

[The text of proposed § 1.6081–4 is the same as the text of § 1.6081–4T published elsewhere in this issue of the **Federal Register**.]

Par. 6. Section 1.6081–5 is amended by revising paragraph (b) to read as follows:

§ 1.6081–5 Extensions of time in the case of certain partnerships, corporations, and U.S. citizens and residents.

* * * * *

(b) [The text of proposed § 1.6081–5(b) is the same as the text of § 1.6081–5T(b) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 7. Section 1.6081–6 is added to read as follows:

§ 1.6081–6 Automatic extension of time to file estate or trust income tax return.

[The text of proposed § 1.6081–6 is the same as the text of § 1.6081–6T published elsewhere in this issue of the **Federal Register**.]

Par. 8. Section 1.6081–7 is added to read as follows:

§ 1.6081–7 Automatic extension of time to file Real Estate Mortgage Investment Conduit (REMIC) income tax return.

[The text of proposed § 1.6081–7 is the same as the text of § 1.6081–7T published elsewhere in this issue of the **Federal Register**.]

Par. 9. Section 1.6081–10 is added to read as follows:

§ 1.6081–10 Automatic extension of time to file withholding tax return for U.S. source income of foreign persons.

[The text of proposed § 1.6081–10 is the same as the text of § 1.6081–10T published elsewhere in this issue of the **Federal Register**.]

Par. 10. Section 1.6081–11 is added to read as follows:

§ 1.6081–11 Automatic extension of time for filing certain employee plan returns.

[The text of proposed § 1.6081–11 is the same as the text of § 1.6081–11T

published elsewhere in this issue of the **Federal Register**.]

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 11. The authority citation for part 25 continues to read, in part, as follows:

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

Par. 12. Section 25.6081–1 is added to read as follows:

§ 25.6081–1 Automatic extension of time for filing gift tax returns.

[The text of proposed § 25.6081–1 is the same as the text of § 25.6081–1T published elsewhere in this issue of the **Federal Register**.]

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Par. 13. The authority citation for part 26 continues to read, in part, as follows:

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

Par. 14. Section 26.6081–1 is added to read as follows:

§ 26.6081–1 Automatic extension of time for filing generation-skipping transfer tax returns.

[The text of proposed § 26.6081–1 is the same as the text of § 26.6081–1T published elsewhere in this issue of the **Federal Register**.]

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 15. The authority citation for part 53 continues to read, in part, as follows:

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

Par. 16. Section 53.6081–1 is added to read as follows:

§ 53.6081–1 Automatic extension of time for filing the return to report taxes due under section 4951 for self-dealing with a nuclear decommissioning fund.

[The text of proposed § 53.6081–1 is the same as the text of § 53.6081–1T published elsewhere in this issue of the **Federal Register**.]

PART 55—EXCISE TAX ON REAL INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 17. The authority citation for part 55 continues to read, in part, as follows:

Authority: 26 U.S.C. 6001, 6011, 6071, 6091, and 7805 * * *

Par. 18. Section 55.6081–1 is added to read as follows:

§ 55.6081–1 Automatic extension of time for filing a return due under Chapter 44.

[The text of proposed § 55.6081–1 is the same as the text of § 55.6081–1T published elsewhere in this issue of the **Federal Register**.]

PART 156—EXCISE TAX ON GREENMAIL

Par. 19. The authority citation for part 156 continues to read, in part, as follows:

Authority: 26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805 * * *

Par. 20. Section 156.6081–1 is added to read as follows:

§ 156.6081–1 Automatic extension of time for filing a return due under Chapter 54.

[The text of proposed § 156.6081–1 is the same as the text of § 156.6081–1T published elsewhere in this issue of the **Federal Register**.]

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Par. 21. The authority citation for part 157 continues to read, in part, as follows:

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

Par. 22. Section 157.6081–1 is added to read as follows:

§ 157.6081–1 Automatic extension of time for filing a return due under Chapter 55.

[The text of proposed § 157.6081–1 is the same as the text of § 157.6081–1T published elsewhere in this issue of the **Federal Register**.]

PART 301—PROCEDURE AND ADMINISTRATION

Par. 23. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 24. Section 301.6081–2 is added to read as follows:

§ 301.6081–2 Automatic extension of time for filing an information return with respect to certain foreign trusts.

[The text of proposed § 301.6081–2 is the same as the text of § 301.6081–2T published elsewhere in this issue of the **Federal Register**.]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–21982 Filed 11–4–05; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Proposal To Require the Electronic Verification System (e-VS) for Destination Entry Parcel Shipments

AGENCY: United States Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to require the use of the Electronic Verification System (e-VS) which is an electronic manifest system, for postage manifesting and payment of all Parcel Select mailings. This includes all Standard Mail machinable parcels or other Package Services Parcels (Bound Printed Matter, Library Mail, or Media Mail) authorized for commingling with Parcel Select Mailings. This requirement would contribute to reduced costs and greater efficiencies. The Postal Service is also exploring expanding the program to all parcel mailings in the future. The proposed rule is being published with an intended implementation date of no sooner than 1 year from the date of publication of the **Federal Register** final rule. The proposed rule would apply as follows:

- Parcel shippers/consolidators and mailers claiming Parcel Select rates would be required to use e-VS for postage manifesting and payment.
- Parcel shippers/consolidators and mailers who commingle Standard Mail machinable parcels or other Package Services parcels with Parcel Select as authorized by *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), 705.6.0 and 705.7.0, would be required to use e-VS for postage manifesting and payment.

DATES: Comments must be received on or before December 7, 2005.

ADDRESSES: Mail or deliver comments to the Manager, Business Mailer Support, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 2P846, Washington, DC 20260–0846. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Gullo via e-mail at *john.f.gullo@usps.gov*, by phone at (202) 268–8057 or by writing to e-VS Program Manager, Business Mailer Support, 475 L'Enfant Plaza, SW., Room 2P846, Washington, DC 20260–0846. Additionally, the following technical guides should be reviewed for detailed program information:

• The October 2005 draft of Publication 205, *Electronic Verification System Technical Guide* (Contact John Gullo for a copy.)

• Publication 91, *Confirmation Services Technical Guide*, which is available at *http://www.usps.com/cpim/ftp/pubs/pub91/welcome.htm*.

SUPPLEMENTARY INFORMATION:

Background

The Postal Service™ is moving towards a seamless acceptance process to promote customer convenience and flexibility in the mail induction and payment process. The current procedures for acceptance and verification of parcel mailings are paper-driven and often challenging. Large-volume parcel shippers are tied to the schedule of Postal Service verification clerks who visit their facilities to verify and accept their mail. For destination-entry parcel shippers this poses a greater challenge as they must prepare paper documentation for each scheduled induction event at the time of acceptance and verification. This paper documentation serves as proof of payment and must travel with the parcel shipments to each induction location. After mail is verified by Postal Service clerks, it often flows through consolidators and transporters who occasionally alter the presentation from what was originally presented to the Postal Service clerks on PS Form 8125, *Plant-Verified Drop Shipment (PVDS) Verification and Clearance*, at verification. The challenge to accurately project mail profiles for each induction event at the time of acceptance is most evident when parcels are commingled, for example by consolidators and transporters, making it even more difficult to update the original certified paper documentation (PS Form 8125) created at the time of acceptance. It is also challenging for Postal Service clerks at induction facilities to reconcile the paper documentation against the physical mail. Clearly there is a need to provide a more flexible and convenient mechanism for mailers to provide and update documentation, induct mail, and for the Postal Service to verify parcel mailings.

In a move to simplify and improve the acceptance, verification, and induction process the Postal Service has worked with the mailing industry to develop a new model for acceptance, verification, and induction of package mailings. Under this model, commonly referred to as the Electronic Verification System (e-VS), mailers barcode all packages and submit an electronic manifest to the Postal Service. This manifest lists all barcoded packages and includes pertinent information such as weight, destination, and induction facility to support postage and fee information. Mail is no longer verified at mailers' plants and mailers are no longer required to create paper documentation (PS Form 8125) describing induction activities. Mailers simply present the mail at the desired facilities. The Postal Service draws statistical samples of the mailings at the appropriate plants and delivery units, and compares these against the electronic manifest submitted to verify the accuracy of the mailing. Electronic reports provide information on the discrepancies noted which facilitate an automated reconciliation process.

E-VS offers significant benefits to both the mailers and the Postal Service. Mailers no longer have to wait for Postal Service verification clerks to verify their mail. Each package is barcoded, providing greater specificity in accounting and postage. Electronic manifests eliminate the need for paper documentation, greatly improve the efficiency of operations and reporting, and provide greater flexibility for updating information. In today's environment where mailers engage in dynamic scheduling, electronic manifests enable them to update information as change occurs. Mailers can pay the Postal Service closer to the time of mailing as electronic manifests can be received right before the mail is inducted. E-VS also facilitates convenient payment capabilities as payment is debited electronically upon receipt of the documentation. The e-VS electronic infrastructure provides a wealth of online reports for the mailers to attain up-to-date mailing and transaction information. E-VS is accessible 24 hours a day, 7 days a week, which facilitates convenient information sharing between the Postal Service and mailers. E-VS eliminates the need for mailers to provide paper documentation and postage statements, thereby contributing to reduced costs and greater efficiencies.

Given the significant benefits that e-VS offers, the Postal Service is announcing plans to mandate its use for postage manifesting and payment of all Parcel Select mailings. This includes all Standard Mail machinable parcels or other Package Services parcels (Bound Printed Matter, Library Mail, or Media Mail) authorized for commingling with Parcel Select mailings. The Postal Service is also exploring expanding the program to all parcel mailings in the future.

Participation in e-VS has two fundamental requirements. The first is the ability to create and transmit an electronic manifest to the Postal Service. This information replaces today's hardcopy manifest, postage statement, and PS Form 8125. The second requirement is the application of a unique barcode on each parcel. Standardized e-VS barcode formats include the Confirmation Services barcodes (i.e., Delivery Confirmation™ and Signature Confirmation™) and the Package Services enroute barcode as an alternative for parcels not containing Confirmation Services.

The Postal Service will mandate implementation no sooner than 1 year from the date of a published final rule to allow mailers time to comply with the requirements for e-VS. The requirements and specifications for e-VS are outlined in the October 2005 draft of Publication 205, *Electronic Verification System Technical Guide*, and are available by contacting John Gullo via e-mail at *john.f.gullo@usps.gov*.

E-VS represents a significant milestone in strengthening the partnership between the Postal Service and the mailing community by offering a convenient and flexible solution for parcel shippers.

Requirements for e-VS Participants

The following requirements are mandatory for e-VS participants:

• Mailers/Parcel shippers are required to pay any appropriate presort or destination entry mailing fees per the DMM;

• Mailers/Parcel shippers must pay the appropriate postage by successfully transmitting electronic manifest files to the PostalOne! e-VS application using the electronic file format identified in the October 2005 draft of Publication 205;

• Mailers/Parcel shippers must apply an authorized UCC/EAN 128 e-VS barcode in compliance with Publication 205;

◦ The mailer ID used in the barcode must be exclusive for the e-VS program and must be unique to the parcel shipper or its client.

◦ Each barcode must be unique for a period of 1 year.

◦ Since Delivery Confirmation service does not require any additional fees for Parcel Select items, mailers/shippers are encouraged to apply a Delivery Confirmation service barcode to all Parcel Select pieces.

◦ Delivery Confirmation service is available on other Package Services and Standard Mail parcels for $0.13 when using the electronic option. Mailers/shippers may elect to apply an alternate e-VS barcode as described in the October 2005 draft of Publication 205 to avoid paying the $0.13 fee. However, no

delivery information will be available when using this barcode.

All specifications and requirements for e-VS can be found in the October 2005 draft of Publication 205 and Publication 91.

Manifest Mailing Operations Using e-VS

Mailers and shippers who meet program requirements may ship parcels using the following procedure:

1. The mailer/parcel shipper transmits an electronic manifest to the Postal Service detailing all e-VS parcels to be deposited into the mail stream on or before the date of mailing;

2. The Electronic Verification System generates a postage statement based on the information received from the mailer's manifest and submits it to PostalOne!

The PostalOne! system is a new information infrastructure deployed by the Postal Service to facilitate convenient centralized payment capabilities and electronic postage reporting. It features an automated, streamlined alternative to the existing hardcopy documentation used in the business mail acceptance process. The PostalOne! system links a customer's mailing information electronically with acceptance, verification, and payment systems, eliminating most of the paperwork. It also provides a wealth of online information customers can use to manage their businesses more efficiently.

3. Postage is debited from the mailer's PostalOne! payment account, and account information including current balances and transactions is updated in the e-VS Web site. The mailer/parcel shipper is able to access the Web site to view postage statements and associated funds debited from the mailer's account;

4. The mailer/parcel shipper transports and enters the mail at the appropriate destination entry Postal Service facility:

- Destination Bulk Mail Center (DBMC).
- Destination Auxiliary Service Facility (DASF).
- Destination Sectional Center Facility (DSCF).
- Destination Delivery Unit (DDU).

5. As parcels are deposited at the destination entry facilities, random parcels are sampled and the resulting data is transmitted to the e-VS application. The sampling process collects information to verify that the postage paid for the sampled parcels has been correctly calculated based on parcel characteristics, including:

- Entry and destination ZIP Code.
- Zone.
- Size.
- Rate markings.
- Weight.
- Barcode information.

Based on the data collected, e-VS calculates the appropriate postage for the sampled parcels and compares the calculated postage to the postage reported on the manifest. The results of the comparison are recorded in the e-VS database and used to calculate the postage adjustment factor (PAF) described in the next section.

6. When barcodes are scanned during the normal processing and delivery operations (e.g., delivery scans collected for Delivery Confirmation), the barcode data is transmitted to the e-VS application to determine if parcels are ''mis-shipped'' or ''un-manifested''. ''Mis-shipped'' parcels are mail pieces that have been dropped at the incorrect destination entry facility. ''Un-manifested'' parcels are mail pieces that have been scanned but do not appear on the mailer's manifest.

7. As sample data is received, the e-VS application compares the data to the mailer's electronic manifest. This process is used to measure the accuracy of the mailer's electronic manifest for proper postage payment.

8. The mailer/parcel shipper is assessed postage for discrepancies found in their electronic manifest through the processes previously described in items 5–7. These assessments include additional postage for mis-shipped and incorrectly rated parcels, as well as postage for un-manifested parcels.

Postage Assessments

The e-VS program will collect postage daily based on the electronic manifest(s) received that day from mailers. In addition, postage will be calculated and assessed for the following types of errors when detected:

- If parcels are dropped at an incorrect entry location and the Postal Service transports the parcels to the correct destination, mailers/parcel shippers will be charged the difference between the manifested postage and the single-piece rate for the parcel.
- If a parcel is not identified on a manifest, the mailer ID in the barcode will be used to determine ownership and responsibility of the parcel and to establish accountability for payment of postage. Postage for these parcels will be based on data collected at destinating Postal Service facilities on these parcels. The mailer/parcel shipper will be allowed to reconcile ''un-manifested'' parcels by transmitting an electronic manifest for the parcels within 10 days of the close of the mailing period. Any ''un-manifested'' parcels receiving a manifest record prior to the 10th day will be removed from this assessment.
- If total paid postage for the parcels on a manifest is understated by more than 1.5%, a Postage Adjustment Factor, or PAF, is calculated by dividing the total postage from the sampled parcels by the postage claimed for the sampled parcels on the mailer's manifest. If the PAF exceeds 1.015, then the manifested postage amount for the entire mailing period is multiplied by the PAF to determine the additional postage due. A mailing period is defined as a calendar month for purposes of calculating adjustments in e-VS.

Postage Payment Schedule

Under the e-VS program, the collection of postage occurs as follows:

- The mailer's PostalOne! payment account is debited on a daily basis. Payment for each manifest is debited on the day the manifest is submitted.
- The mailer's PostalOne! payment account is debited weekly for mis-shipped postage accumulated from the previous week.
- At the end of each mailing period, defined as a calendar month, the mailer's PostalOne! payment account is debited for postage assessed for (1) un-manifested parcels and (2) for any postage adjustments necessary if their PAF is greater than 1.015. The PAF adjustment and postage assessment for un-manifested parcels are processed on the 21st day of the month following the mailing period to allow mailers time to investigate and reconcile discrepancies. Between the end of a mailing period and the 21st day of the following month, there are two 10-day review periods:
- The first 10-day period is a mailer review period and begins immediately after the end of the mailing period and extends through the 10th day of the month following the mailing period. During this period, the mailer may submit manifests to account for un-manifested parcels.
- The second 10-day period is a Postal Service/mailer joint review period and begins immediately following the mailer review period and extends through the 20th day of the month following the mailing period. During this period, at the mailer's request, the mailer may jointly review the sampling data with the Postal Service to dispute any data indicating a postage adjustment is due.
- Appeals and refund requests must be submitted in writing to the Business Mailer Support manager within 30 days following the end of the Postal Service/Mailer joint review period.

e–VS Implementation

Implementation will occur no earlier than 1 year from the date of the published final rule. This one year implementation period will provide mailers with ample time to comply with e-VS standards, as well as time to perform testing necessary to ensure satisfactory operation.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as provided below:

Mailing Standards of the United States Postal Service

Domestic Mail Manual

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400 Discount Mail Parcels

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440 Standard Mail

* * * * *

446 Enter and Deposit

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2.0 Destination Entry

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2.3 Postage Payment

[Revise 2.3 to read as follows:]

Except for mailings paid using the Electronic Verification System (e-VS), mailers pay postage at the Post Office where they are authorized to present mailings for verification. For mailings paid using e-VS, mailers must pay postage to the Post Office where they hold the permit imprint. Prior to mailing, mailers must ensure that they have paid the correct mailing fee(s) for the current 12-month period at the Post Office where they are paying postage for the mailing.

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2.7 Verification

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2.7.2 Mail Separation and Presentation

[Revise 2.7.2 to read as follows:]

Effective January 1, 2007, mailers who commingle Standard Mail parcels with Parcel Select mailings authorized under 705.6.0 must present mailings and pay postage using the Electronic Verification System (e-VS) (See 705.2.9). Until January 1, 2007 or unless they are already presenting mailings using e-VS, mailers must present destination entry rate mailings for verification and acceptance as follows:

a. Present mailings for verification and acceptance at a business mail entry unit (BMEU) located at a destination BMC, destination sectional center facility, or other destination postal facility designated by the Postal Service; or

b. Present mailings for Postal Service verification under a plant-verified drop shipment (PVDS) system (see 705.15.0), and then enter mailings at destination entry facilities under the following conditions:

1. Mailers must ensure that mailings are accompanied by a Form 8125, 8125–C, or 8125–CD completed by the mailer and the verifying Post Office.

2. Mailers must separate mailings for deposit at one destination postal facility from mailings for deposit at other facilities to allow reconciliation with each accompanying Form 8125, 8125–C, or 8125–C.

3. Mailers may deposit only PVDS mailings at a destination delivery unit not co-located with a postal facility having a BMEU.

c. When Periodicals mail is on the same vehicle as Standard Mail, mailers should load the Periodicals mail toward the tail of the vehicle so that it can be offloaded first.

[Delete 2.7.3 and renumber 2.7.4 to 2.7.7 as 2.7.3 to 2.7.6.]

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450 Parcel Post

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454 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

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1.2 Postage Payment

[Revise 1.2 to read as follows:]

Mailers must pay postage and fees to the Post Office where they are authorized to present mailings for verification. See 456.2.2.4 for additional information about paying postage and fees for Parcel Select mailings.

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456 Enter and Deposit

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2.0 Parcel Select

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2.2 Rate Eligibility for Parcel Select Rates

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2.2.4 Postage Payment

[Revise 2.2.4 to read as follows:]

Postage payment is subject to the following:

a. Mailers must pay postage and fees to the Post Office where they are authorized to present mailings for verification, except under 2.2.4b. Except for plant-verified drop shipments (see 705.15.0) or metered mail drop shipments (see 705.17.0), mailers must have a meter license or permit imprint authorization at the parent Post Office for mailings deposited for entry at a DBMC or ASF, at a DSCF, or at a DDU.

b. Effective January 1, 2007, mailers who mail parcels claimed at the Parcel Select rate must use the Electronic Verification System (e-VS) as described in 705.2.9. Mailers using e-VS must pay postage and fees to the Post Office where they hold the permit imprint.

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2.4.3 Mail Separation and Presentation

[Revise 2.4.3 to read as follows:]

Effective January 1, 2007, mailers must present all Parcel Select mailings using the Electronic Verification System (e-VS) (see 705.2.4.3). Until January 1, 2007, mailers may present Parcel Select mailings without using e-VS. Mailers must have destination entry rate mail verified under a PVDS system (see 705.15.0) or present mailings for verification and acceptance at a BMEU located at a designated destination postal facility. Mailers may deposit only PVDS mailings at a destination delivery unit not co-located with a Post Office or other Postal Service facility having a business mail entry unit. Mailers presenting destination entry mailings to the Postal Service must meet the following requirements:

a. Mark each piece of DBMC, DSCF, or DDU rate Parcel Post as either ''Parcel Post'' or ''Parcel Select,'' according to standards in 402.2.2. Also, effective January 1, 2007, mailers also must mark each piece ''e-VS,'' adjacent to the rate marking.

b. Separate DBMC rate mailings by zone for permit imprint mailings of

identical-weight pieces that are not mailed using a special postage payment system under 705.2.0 through 705.4.0, or that are not mailed under 455.1.4.

c. Except for PVDS mailings presented using e-VS, mailers must ensure that all PVDS mailings are accompanied by a Form 8125, 8125–C, or 8125–CD completed by the mailer and the verifying Post Office.

d. Separate each mailing from other mailings for verification. For PVDS mailings, separate mailings for deposit at different destination postal facilities to allow for reconciliation with each Form 8125, 8125–C, or 8125–CD, unless presenting mailings using e-VS.

e. Separate mail from freight transported on the same vehicle.

f. If Periodicals mail is on the same vehicle as Parcel Post, load the Periodicals mail toward the tail of the vehicle so that, for each destination entry, the Periodicals mail can be offloaded first.

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460 Bound Printed Matter

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466 Enter and Deposit

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2.0 Destination Entry

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2.3 Postage Payment

[Revise 2.3 to read as follows:]

Postage payment is subject to the following:

a. Mailers must pay postage and fees to the Post Office where they are authorized to present mailings for verification, except for mail paid using the Electronic Verification System (e-VS).

b. Effective January 1, 2007, when parcels for any destination rates are commingled with Parcel Select mail under 705.7.0, mailers must document and pay postage using e-VS under 705.2.9.

c. For mailings paid using e-VS, mailers must pay postage and fees to the Post Office where the mailer holds the permit imprint.

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2.8 Verification

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2.8.2 Mail Separation and Presentation

[Revise text of 2.8.2 to read as follows:]

Effective January 1, 2007, mailers must present all BPM parcel manifest mailings commingled with Parcel Select mail (under 705.7.0) using the Electronic Verification System (e-VS) (see 705.2.4.3). Until January 1, 2007, mailers may present mailings using a Manifest Mailing System (MMS) without participating in e-VS. Mailers must have destination entry rate mail verified under a PVDS system (see 705.15.0) or present mailings for verification and acceptance at a BMEU located at a designated destination postal facility. Mailers may deposit only PVDS mailings at a destination delivery unit not co-located with a Post Office or other Postal Service facility having a business mail entry unit. Mailers presenting destination entry mailings to the Postal Service must meet the following requirements:

a. Except for mailings presented using e-VS, mailers must ensure that all PVDS mailings are accompanied by a Form 8125, 8125-C, or 8125-CD completed by the mailer and the verifying Post Office.

b. Separate each mailing from other mailings for verification. For PVDS, separate mailings for deposit at different destination postal facilities to allow reconciliation with each Form 8125, 8125-C, or 8125-CD, unless presented using e-VS.

c. Separate mail from freight transported on the same vehicle.

d. If Periodicals mail is on the same vehicle as Standard Mail, load the Periodicals mail toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

* * * * *

700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

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2.0 Manifest Mailing System (MMS)

2.1 Description

[Add new 2.1.1 and transfer text from old 2.1 to new 2.1.1. Change the last sentence in new 2.1.1 to read as follows:]

2.1.1 Using an MMS

* * * The standards in 2.2 describe how to mail using an MMS.

[Add new item 2.1.2 to read as follows:]

2.1.2 Required Use of Electronic Verification System (e-VS)

Effective January 1, 2007, mailers using MMS when presenting Parcel Select mailings under 456.2.0 or commingled mailings with Parcel Select under 705.6.0 or 705.7.0 also must document and pay postage using e-VS under 2.9. Business Mailer Support (BMS) can provide mailers with information for developing and receiving approval for these systems.

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2.4 Authorization

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2.4.1 Application

[Revise by adding the following sentence to the end of 2.4.1 to read as follows:]

* * * *Publication 205, Electronic Verification System Technical Guide* provides the application procedures for mailers required to use e-VS (see 2.1.2). To receive a copy, contact the Business Mailer Support manager, USPS Headquarters (See 608.8.0 for address.).

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2.4.3 General Requirements for Authorization

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[Revise item b, renumber items c, d, and e as items e, f, and g, and add new items c and d to read as follows:]

b. If total postage of pieces sampled during verification indicates that the mailer has underpaid postage by more than 1.5% when compared to the manifest, USPS will adjust total postage in accordance with procedures in Publication 205. USPS will charge e-VS participants at the end of the review period at the end of the mailing period.

c. USPS will charge e-VS participants the appropriate single-piece rate for mis-shipped parcels (parcels deposited at incorrect destination facilities). USPS will transport these mis-shipped parcels to the correct destination.

d. USPS will charge e-VS participants for any parcels that do not appear on the mailer's manifest but are identified by USPS processing scans as being mailed. In addition, USPS will remove these un-manifested parcels from any sampling adjustments.

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2.4.4 Approval Authority

The final authority for manifest mailing approval is as follows:

* * * * *

[Revise 2.4.4 b. to read as follows:]

b. The Business Mailer Support manager, USPS Headquarters, approves manifest mailing systems that produce presorted First-Class Mail and Standard Mail mailings, Package Services mailings, PVDS mailings, and all mailings using e-VS.

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[Add new 2.9 to read as follows:]

2.9 Electronic Verification System (e-VS)

2.9.1 Required Use

Effective January 1, 2007, mailers depositing parcels at Parcel Select rates must document and pay postage using e-VS as described in 2.9. In addition, mailers authorized to commingle Standard Mail machinable parcels or Package Service parcels with Parcel Select under 705.6.0 and 705.7.0 must document and pay postage for all parcels in the mailing using e-VS.

2.9.2 Mailer System

Mailers must have an automated system that produces mail according to USPS standards and calculates postage accurately. Mailers must assign a barcode to each mailpiece in accordance with Publication 205, Electronic Verification System Technical Guide. USPS will scan barcodes during sampling to verify information from the mailer's manifest. Mailers also must produce and submit an electronic manifest, as described in Publication 205, for each mailing deposited at a destination postal facility. USPS will scan barcodes during sampling to verify information from the mailer's manifest. The electronic manifest must account for every piece in the mailing, under the following conditions:

a. For each mailpiece produced, the electronic manifest must list the postage for the piece and the factors used to calculate the correct amount of postage, such as the piece weight and destination postal zone.

b. For each record produced, the manifest must include the unique package identification code represented by the barcode on the mailpiece.

c. When extra services are requested, the manifest must include the correct fees for each piece.

2.9.3 Mailer Quality Control

Mailers must implement a quality control program that ensures proper mail preparation and provides accurate documentation. The service agreement must detail the USPS-approved quality control procedures.

2.9.4 Required Barcode

Mailers must apply an approved barcode on the address side of each mailpiece. Barcodes must meet specifications described in Publication 205, *Electronic Verification System Technical Guide*.

2.9.5 Postage Payment

USPS will calculate postage payment and electronically debit postage from the mailer's postage account based on information received from the mailer's electronic manifest and data collected through USPS operational and sampling scans. Mailings deposited under the e-VS program must meet the standards for permit imprint mail in 604.6.0. Mailers must pay for postage through a Centralized Account Payment System (CAPS) account.

2.9.6 General Requirements for Participation

General requirements for participation are as follows:

a. Mailers must apply on each mailpiece a unique barcode with the mailer ID number.

b. Mailers must transmit an electronic manifest on or before the date of mailing.

c. USPS randomly samples parcels and considers verification samples to be representative of the entire mailing period. USPS applies postage adjustment calculations, based on verification samples, to all mailpieces mailed during the mailing period. A mailing period is defined as a calendar month for purposes of calculating adjustments in e-VS.

d. USPS will adjust the total postage for the mailing period if the total postage or the total weight of pieces sampled during the mailing period results in an underpayment by 1.5% or greater.

e. The mailer must pay additional postage for any underpayments identified by USPS verification. Mailers must maintain sufficient funds in their postage accounts to cover any underpayments discovered after acceptance of the mail.

2.9.7 Authorization

Mailers must be authorized to participate in e-VS according to the following procedures:

a. Mailers must submit an e-VS application and supporting documentation as specified in Publication 205, *Electronic Verification System Technical Guide*, to the Business Mailer Support manager, USPS Headquarters (See 608.8.0 for address.).

b. After mailers successfully complete development and testing for e-VS, the USPS will grant temporary approval. USPS will conduct a review within 90 days of the temporary approval and will give final approval if the mailer's system is working as required. The Business Mailer Support manager, USPS Headquarters, has final authority for e-VS participation approval.

c. After receiving final authorization, the mailer and a USPS representative must sign a service agreement. The agreement contains provisions regarding mailer and USPS responsibilities, including electronic documentation, document retention, quality control, and the duration of the agreement.

2.9.8 Denial

If USPS denies an e-VS application, the mailer may appeal the decision within 15 days from the receipt of the notice by filing a written appeal, including evidence showing why they should be authorized to use e-VS. Send the appeal to the Business Mail Acceptance manager, USPS Headquarters, who issues the final agency decision (See 608.8.0 for address).

2.9.9 Revocation

The Business Mailer Support manager has authority to revoke authorization for e-VS participation for any of the following reasons:

a. A mailer provides incorrect data in the electronic manifest and is not able or willing to correct the problems.

b. A mailer is not properly completing the required quality control procedures.

c. The mailings no longer meet e-VS criteria established by this standard or in the e-VS service agreement.

d. A mailer does not present mailings using e-VS for more than 6 months (except as noted in the service agreement).

e. A mailer presents mailings that are improperly prepared.

f. A mailer is not paying proper postage.

2.9.10 Corrective Action

After USPS issues a notice of revocation, to a mailer, the mailer and the USPS determine corrective actions, including an implementation schedule. At the conclusion of the implementation period, the USPS reexamines the mailer's system to determine if it complies with the program requirements. Failure to correct identified problems is sufficient grounds to sustain revocation of the mailer's e-VS authorization.

2.9.11 Appeal of Revocation

After receiving initial notice of revocation, a mailer has 15 days from the date of receipt of the revocation notice to file a written appeal with the Business Mail Acceptance manager, USPS Headquarters. The appeal must include the reason the e-VS authorization should not be revoked. The mailer may continue to mail using e-VS during the appeal process. The Business Mail Acceptance manager issues the final agency decision. The final revocation takes effect 15 days

after the date of the final agency decision.

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6.0 Preparation for Combined Mailings of Standard Mail and Package Services Parcels

[Revise title of 6.1 as follows:]

6.1. Combined Machinable Parcels—DBMC Entry

* * * * *

[Revise title of 6.1.2.]

6.1.2 Basic Standards

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6.1.3 Postage Payment

[Revise 6.1.3 to add requirement for e-VS and reorganize to read as follows:]

Mailers must pay postage for all pieces with a permit imprint at the Post Office serving the mailer's plant using one of the following postage payment systems. The applicable system agreement must include procedures for combined mailings approved by Business Mailer Support.

a. Manifest Mailing System (MMS), under 2.0;

b. Optional Procedure (OP) Mailing System, under 3.0, until January 1, 2007; or

c. Alternate Mailing System (AMS), under 4.0, until January 1, 2007.

d. Effective January 1, 2007, for mailings presented under 705.6.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

* * * * *

[Revise title of 6.2 to read as follows:]

6.2 Combining Parcels—DSCF Entry, Parcel Post OBMC Presort and BMC Presort

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6.2.3 Postage Payment

[Revise text of 6.2.3 to include e-VS requirement for DSCF Entry parcels, to read as follows:]

Mailers must pay postage for all pieces with a permit imprint at the Post Office serving the mailer's plant using an approved manifest mailing system under 2.0. The following conditions also apply.

a. The applicable system agreement must include procedures for combined mailings approved by Business Mailer Support.

b. Effective January 1, 2007, for mailings presented under 705.6.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

* * * * *

7.0 Combining Package Services Parcels for Destination Entry

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7.1 Combining Parcels

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7.1.2 Basic Standards

[Add the following sentence at the end of 7.1.2b.]

b. * * * Effective January 1, 2007, for mailings presented under 705.7.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect these changes will be published if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–22156 Filed 11–4–05; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–1998–3639]

RIN 2126–AA37

Safety Fitness Procedures; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: The Federal Motor Carrier Safety Administration [formerly Office of Motor Carriers (OMC) within Federal Highway Administration (FHWA)] withdraws its July 20, 1998 ANPRM and request for comments pertaining to the future evolution of the safety fitness rating system. After the ANPRM was published, FMCSA began the Comprehensive Safety Analysis 2010 Initiative (CSA 2010), a comprehensive review and analysis of FMCSA's current commercial motor carrier safety compliance and enforcement programs. FMCSA held a series of public listening sessions pertaining to CSA 2010 in September and October 2004. Many commenters at those listening sessions suggested that FMCSA delay publishing a notice of proposed rulemaking (NPRM) until the agency makes its final decisions regarding its long-term plan for monitoring motor carrier safety under CSA 2010. Therefore, this rulemaking is no longer necessary because, as CSA 2010 proceeds, FMCSA expects to publish a rulemaking that would propose a new and improved safety compliance and monitoring methodology based on more recent information and policy.

DATES: The ANPRM with request for comments published July 20, 1998 is withdrawn as of November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Nicole McDavid, Office of Enforcement and Program Delivery, (202) 366–0831, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1997, FHWA (now FMCSA) published a final rule incorporating its safety fitness rating methodology (SFRM) as Appendix B to 49 CFR 385. In that document, the agency identified its ultimate goal as creating a more performance-based means of determining the fitness of motor carriers to conduct commercial motor vehicle (CMV) operations in interstate commerce. The final rule announced that FHWA would soon publish an ANPRM that would address the future evolution of its rating system methodology. Since that final rule, Congress substantially heightened the importance of Unsatisfactory ratings by amending 49 U.S.C. 31144 to prohibit transportation of any property in interstate commerce by motor carriers with Unsatisfactory ratings. (Transportation Equity Act for the 21st Century [Pub. L. 105–178, June 9, 1998, 112 Stat. 107])

On July 20, 1998, FHWA issued an ANPRM titled ''Safety Fitness Procedures'' (63 FR 38788) seeking comments and supporting data on what issues should be considered in developing a future safety fitness rating system. Specifically, the ANPRM invited responses to 21 detailed questions focusing on what a future SFRM should include.

On October 9, 1999, the Secretary of Transportation (Secretary) rescinded his authority to FHWA to carry out most of the motor carrier functions and operations (64 FR 56270, October 19, 1999) and redelegated that authority to the Director of the new Office of Motor Carriers. On October 29, 1999, the Secretary rescinded his authority to FHWA to carry out other duties and powers related to motor carrier safety vested in the Secretary by statute (64 FR 58356). Then, on January 1, 2000, responsibility for motor carrier

functions, operations, and safety within the Department of Transportation was transferred from FHWA to the Administrator of a new agency—FMCSA (65 FR 220, January 4, 2000).

In August 2004, FMCSA embarked on CSA 2010—a comprehensive review and analysis of FMCSA's current commercial motor vehicle safety compliance and enforcement programs that aims to identify better methods of improving highway safety (69 FR 51748, August 20, 2004). Currently, FMCSA and State agencies are able to conduct compliance reviews on only a small percentage of the more than 675,000 motor carriers listed in FMCSA's Motor Carrier Management Information System (MCMIS). Therefore, FMCSA is looking for ways to: (1) Improve monitoring of motor carriers, (2) make agency processes more efficient, and (3) expand its enforcement and compliance reach in the regulated community. These actions would improve FMCSA's ability to meet its goal of significantly reducing crashes, fatalities, and injuries involving large trucks and buses. The intent of CSA 2010 is to establish an operational model that could be used to confirm that a motor carrier has a safe operation as well as to identify unsafe motor carrier operations that should be targeted for compliance and enforcement activities. This new operational model will be critical to ensuring FMCSA can keep pace with the burgeoning motor carrier industry and continue to provide for the safe transportation of people and goods on the nation's highways. Moreover, this new operational model will directly affect any future SFRM.

In September and October 2004, FMCSA held a series of public listening sessions pertaining to CSA 2010. Specifically, FMCSA was soliciting input on ways that it could improve its process of monitoring and assessing the safety of the motor carrier industry and how that information should be presented to the public. Although broader in scope than the ANPRM, the public listening sessions included much input regarding improving FMCSA's safety and compliance programs. Specific to the Safety Fitness Procedures rulemaking initiative, many commenters offered suggestions and recommendations regarding safety indicators, compliance reviews, data gathering, performance measures, safety fitness ratings, regulatory compliance, rewards versus penalties to encourage compliance, and the use of third-party resources. Moreover, many commenters at those listening sessions suggested that FMCSA delay publishing a NPRM under the Safety Fitness Procedures rulemaking action until FMCSA makes its final decision regarding its long-term plan for monitoring motor carrier safety under CSA 2010. For further detail on the public listening sessions, see FMCSA's final report, ''Comprehensive Safety Analysis 2010 Listening Sessions'' (Docket No. FMCSA–2004–18898).

Summary of Comments to the ANPRM

The 1998 ANPRM invited responses to 21 specific questions focusing on how the future FMCSA SFRM should look. FMCSA received 37 public comments on this rulemaking. An Appendix to this notice lists the questions asked in the ANPRM and provides a summary of the comments received to date on each question.

FMCSA Decision

After reviewing the public comments on the Safety Fitness Procedures ANPRM and the public's input at the CSA 2010 public listening sessions, FMCSA has determined that it is in the public's interest to withdraw the ANPRM and defer further rulemaking activity in this area until FMCSA establishes its revised operational model under CSA 2010 that will set forth the methodology for a future safety fitness rating system. As noted above, the agency has reviewed and summarized all of the comments received to date. FMCSA will address the comments received in response to this ANPRM in the context of the CSA 2010 initiative and in any SFRM rulemaking growing out of that comprehensive safety analysis.

Because numerous comments in response to the ANPRM addressed the use of third-party contractors, we think it informative to note FMCSA has been using contractors to conduct safety audits since January 2004. The use of contractors was, and is, necessary to address the need for heightened safety compliance monitoring under the New Entrant Safety Assurance Process. FMCSA has built into its contracts with third-party contractors effective safeguards against fraud and other abuses. It requires private contractors to meet the same minimum certification requirements as Federal and State safety auditors, including certain education, experience, and testing requirements.

FMCSA anticipates publishing a new rulemaking addressing a motor carrier safety fitness rating system consistent with the new methodology for monitoring motor carrier safety developed as part of the CSA 2010 initiative. FMCSA will consider fully all comments to this ANPRM in developing any new rulemaking document addressing a motor carrier safety fitness rating system or methodology. Therefore, FMCSA is withdrawing its July 20, 1998 ANPRM on Safety Fitness Procedures.

Issued on: October 31, 2005.

Annette M. Sandberg,

Administrator.

Appendix—Discussion of Comments to the ANPRM

FMCSA's 1998 ANPRM on Safety Fitness Procedures invited responses to 21 specific questions focusing on how the agency's future SFRM should look. FMCSA received responses from 37 commenters [1]. Listed below are the questions asked in the ANPRM and, under each, a summary of the public comments the agency has received to date. As noted in the preamble to this notice, FMCSA will address these comments in the context of the CSA 2010 initiative and in any SFRM rulemaking growing out of that study.

Question 1. What do you believe should be the principal ingredients of a rating system? What kind of a rating system would best suit your needs? Why?

Many commenters asserted that crash involvement should be the principal criterion used in a rating system with regulatory compliance mentioned nearly as often and vehicle inspections following as a close third. Other commenters mentioned driver qualifications, out-of-service violations, moving violations, and general (unspecified) performance data. Several commenters believed the factors used in FMCSA's current rating system are appropriate.

Most commenters wanted a rating system that encourages safety, reduces motor carrier crash risk, and recognizes safe motor carriers. ATA would like to see a safety fitness rating

[1] Comments were received from the following: 11 State governmental organizations (Arizona Department of Public Safety; Colorado Department of Public Safety, Colorado State Patrol; Department of California Highway Patrol; Idaho Department of Law Enforcement, State Police Division; Iowa Department of Transportation; Louisiana Department of Public Safety and Correction, Louisiana State Police; Michigan Department of State Police; Michigan Public Service Commission; Oregon Department of Transportation; Oregon Freight Advisory Committee; and Public Utilities Commission of Ohio, Transportation Department), 9 motor carriers (ABC Bus Companies, Inc.; CoachUSA; Duplainville Transport; Frozen Food Express Industries, Inc.; HCI U.S.A. Distribution Companies, Inc.; Interstate Distributor Co.; Thompson Trucking, Inc.; Werner Enterprises, Inc.; and Yellow Corporation and subsidiaries), 8 trade associations (American Insurance Association; American Trucking Associations (ATA); Association of Waste Hazardous Materials Transporters; Commercial Vehicle Safety Alliance; National Private Truck Council (NPTC); National Tank Truck Carriers, Inc.; Transportation Lawyers Association; and Truckload Carriers Association), 3 consulting groups (Consolidated Safety Services, Inc.; International Motor Carrier Audit Commission; and Tran Services), a utility company (Alabama Power Company), a safety advocacy group (Advocates for Highway and Auto Safety), a labor union (International Brotherhood of Teamsters), an insurance company (Great West Casualty Company), the Canadian Council of Motor Transport Administrators, and an individual.

system that reflects safety performance rather than regulatory compliance. The State of Louisiana asserted that the rating system allows the State to fulfill its obligation of ensuring motorists' safety.

Question 2. What benefits do you expect to gain from a rating system? What business decisions do you presently base on carrier ratings?

Commenters cited the following benefits from a rating system:

- Improved safety for commercial motor vehicle drivers and other motorists,
- Lower insurance rates,
- Greater marketing potential and more business for safer motor carriers,
- More efficient use of State and local resources to target unsafe motor carriers,
- Crash reduction,
- Community recognition, and
- Ability to obtain a hazardous materials permit.

One commenter stated the current system is acceptable.

With regard to business decisions, many commenters reported that the rating system assists them in hiring motor carriers. The Arizona Department of Public Safety; Michigan Department of State Police, Michigan Public Service Commission; and Oregon Department of Transportation noted that the rating system supports their enforcement strategies. Another commenter indicated that the rating system should help motor carriers improve their performance and compliance. Thompson Trucking, Inc. remarked that the rating system would not affect its business decisions.

Question 3. Are there differences in the way ratings should be used? (e.g., by FHWA [FMCSA]? by shippers? by others?)

Most commenters agreed that safety fitness ratings have different uses. Some commenters suggested that FMCSA use the ratings as part of the compliance review in determining which motor carriers have adequate safety controls in place. Others commented that shippers could use ratings to determine whether a motor carrier is responsible and adheres to the same standards as the shipper.

Two commenters contended that safety ratings should not have different uses. One commenter added that only FMCSA should use the ratings.

Question 4. If ratings must impact the continued operations of rated carriers, what is the appropriate threshold for determining that a carrier is unsatisfactory, meaning ''unfit to operate''?

Commenters deemed the following events or factors as appropriate Unsatisfactory thresholds:

- Abnormally high crash rate,
- Failure to correct a problem after receiving notice of the problem,
- Lack of safety management controls,
- Inspection failures,
- Continued violation of the FMCSRs, and
- Use of unqualified drivers.

Other commenters, including the Association of Waste Hazardous Materials Transporters and ATA, stated that only violations of performance-related regulations, as opposed to paperwork-related violations, should result in an Unsatisfactory rating. The Michigan Department of State Police went further by suggesting that in assigning Unsatisfactory ratings, FMCSA count only those performance-related regulations which, if violated, could expose the driver or the public to imminent harm.

The Colorado Department of Public Safety, Colorado State Patrol suggested using a weighted point system such as that employed by SafeStat. Several other commenters recommended setting a minimum standard rather than ranking motor carriers against one another.

Question 5. Should the FHWA [FMCSA] continue to maintain the three ratings: Satisfactory, Conditional, or Unsatisfactory? If yes, what benefits do you perceive in maintaining the three ratings?

Commenters, including motor carriers, trade associations, and State governments, were split almost evenly on this question. Those commenters who supported keeping the current three ratings of Satisfactory, Conditional, and Unsatisfactory gave reasons such as: (1) The ratings are easy to understand and adequately serve their intended purpose and (2) the ratings provide essential information to the public, shippers, and motor carriers. One commenter noted that if FMCSA changed the rating system, past ratings might become irrelevant. Another commenter suggested FMCSA keep at least the Satisfactory and Unsatisfactory ratings but add intermediate levels (besides the Conditional rating used in the current methodology).

Among those commenters taking the opposite position, most recommend limiting the ratings to Satisfactory and Unsatisfactory. Several commenters also suggested placing new motor carriers in a probationary or provisional status until they receive a rating. Other commenters recommended replacing the current rating system with SafeStat.

Question 6. What should be the highest tier in such a system, and what should it connote?

Commenters agreed that Satisfactory should be the highest tier in the rating system and suggested a Satisfactory rating connote that the motor carrier

- Is doing a good job of decreasing crashes and moving violations and maintaining regulatory compliance.
- Has acceptable compliance and management efforts.
- Has acceptable performance measures.
- Is safe enough to be in business.
- Meets the requisite criteria for the class.
- Is 90- to 100-percent compliant with the regulations.
- Has an acceptable level of compliance.

Question 7. How long should any rating last?

Opinions on this question varied considerably. Commenters suggested timeframes ranging from 6 months to indefinitely or until some indicator falls below an acceptable level. Most commenters believed the duration should be tailored to the rating. Many commenters suggested using SafeStat as a model.

Question 8. Do you see any benefit to a single rating system by the FHWA [FMCSA] which would be concerned only with unsatisfactory carriers that would have to improve or cease operating?

Most commenters did not support a system focusing solely on the Unsatisfactory rating. They believed such a system would be inadequate and potentially misleading as well as make a negative impression on the public. The Association of Waste Hazardous Materials Transporters noted that a single rating system would not fulfill FMCSA's obligation to both Congress and the States to provide affirmative evidence of compliance.

In contrast, several commenters contended that a single-rating system would be more efficient. One commenter suggested that FMCSA use such a system if the resources are unavailable to support a tiered rating system.

Question 9. Should such ratings be determined entirely by objective (performance-based) criteria? Why?

Commenters were almost evenly split with slightly more commenters, including the Arizona Department of Public Safety; Colorado Department of Public Safety, Colorado State Patrol; Louisiana Department of Public Safety and Correction, Louisiana State Police; and Michigan Department of State Police, favoring the use of performance-based criteria in conjunction with the motor carrier's level of regulatory compliance. Many commenters in this group noted that performance data and regulatory compliance are complementary measures of safety fitness because performance data are indicators of past behavior while regulatory compliance points to future behavior.

Among the commenters who suggested using only performance-based criteria, several contended that performance and effort correlate directly with safety whereas regulatory compliance must be assessed more indirectly through the motor carrier's compliance with paperwork requirements. In contrast, one commenter suggested basing the safety rating solely on regulatory compliance.

Question 10. What data elements best reveal the safety performance of the motor carrier and should receive consideration in future safety fitness determinations?

Commenters suggested using the following data elements (in order of the frequency with which they were mentioned) to make safety fitness determinations:

(1) Crashes (taking into account fault versus no fault),

(2) Inspections/out-of-service violations,

(3) Regulatory compliance,

(4) Moving violations,

(5) Use of qualified drivers,

(6) Management controls (such as training and substance abuse testing),

(7) Hazardous materials compliance and/or violations,

(8) Current data elements, and

(9) Financial condition of the motor carrier.

The Commercial Vehicle Safety Alliance and Michigan Department of State Police contended public opinion regarding these data elements would inevitably show bias. In their view, FMCSA should conduct research to identify the salient risk factors and use those factors as the data elements.

Question 11. How should regulatory compliance be treated in safety fitness determinations? Which regulations are most important in evaluating safety fitness?

Nearly all commenters believed FMCSA should consider regulatory compliance in

determining a motor carrier's safety fitness rating. Many commenters suggested that the motor carrier's desire and ability to operate within the regulations be considered a safety benchmark.

A number of commenters believed FMCSA should distinguish between violations of acute and critical regulations. Those commenters believed paperwork errors should not be considered a compliance violation for safety fitness purposes. ATA and Werner Enterprises, Inc. recommended FMCSA conduct research to verify a link between compliance and safety before using compliance violations in determining safety fitness ratings.

With regard to the regulations most important to the evaluation of safety fitness, commenters cited the following issues (in descending order of the frequency with which they were mentioned):

(1) Vehicle inspections (related both to repair and maintenance),

(2) Qualifications of drivers,

(3) Reporting of crashes,

(4) Drug and alcohol testing,

(5) Logbook violations, and

(6) Hazardous materials violations.

The NPTC suggested that any regulations regarding management controls would be most important to safety fitness determinations. The Louisiana Department of Public Safety and Correction, Louisiana State Police contended that all the regulations are important because they represent the minimum safety standards.

Question 12. How should poor compliance be reconciled with good safety experience? Should a motor carrier be rated unsatisfactory even if it has a low accident rate?

A number of commenters supported giving Unsatisfactory ratings to motor carriers with poor compliance but good safety experience. Two of those commenters added that FMCSA should differentiate between motor carriers making paperwork mistakes and those that ignore the regulations. In contrast, four commenters opposed assigning Unsatisfactory ratings to motor carriers with low crash rates.

Commenters who contended that noncompliance with the safety regulations should be evaluated independently of crash rates gave the following reasons:

- There appears to be a correlation between compliance and future safety fitness,
- A low crash rate could simply be a matter of luck, and
- Allowing noncompliant motor carriers to escape an Unsatisfactory rating would be unfair to motor carriers that comply with the regulations.

Seven commenters maintained that FMCSA must consider both regulatory compliance and safety performance. However, they did not suggest specific ways to achieve this.

One commenter posited that if poor compliance coexists with good safety experience, this could mean the regulations have little impact on safety.

Question 13. Do you believe there is presently sufficient data available to make judgments about a motor carrier's ability to stay in business?

Most commenters believed FMCSA has sufficient performance and compliance data to determine whether it is safe to allow a motor carrier to stay in business. However, several commenters expressed reservations about the sufficiency, accuracy, and quality of the data collected by FMCSA. NPTC argued that SafeStat seriously underreports crashes for two reasons: (1) The current database is limited to crashes meeting the National Governors Association reporting standards, which exclude less-severe crashes, and (2) States and local jurisdictions have inadequate reporting procedures. NPTC also recommended that FMCSA expand and prioritize the types of data it presently captures on driver behavior and vehicle condition.

ATA considered the safety rating so important that it believed FMCSA's data must be impeccable. ATA urged the agency to work with law enforcement, the States, and the trucking industry to help improve the accuracy and quality of the data. ATA asserted that in the interest of fairness and uniformity, FMCSA should take responsibility for correcting data errors or discrepancies instead of referring the motor carrier to the State(s) that provided the data. In addition, ATA noted the importance of keeping MCS–150 forms current as many performance measures are based on information motor carriers provide on the forms.

The Transportation Lawyers Association criticized the adequacy of FMCSA's data and contended that there are due process concerns when a safety rating based on questionable data carries severe economic consequences.

Other commenters cited a need for better controls on the data collections, noting that many inspectors record only inspections with negative results keeping no record of positive inspections. One commenter questioned whether FMCSA has enough inspectors to review all the available data.

Question 14. Should carriers be grouped by similarity of operations? By size?

A majority of commenters supported grouping motor carriers in some way. The most frequently recommended sorting criteria were operating environment (rural versus urban), size, and type of transport. One commenter suggested grouping motor carriers by MCS–150 filing categories.

Of those commenters opposed to sorting motor carriers into groups, some argued that FMCSA should apply uniform standards to all motor carriers. The Colorado Department of Public Safety, Colorado State Patrol contended that grouping motor carriers would be unnecessary if FMCSA rated all motor carriers against a particular standard rather than ranking them.

Question 15. Are there significant benefits to be derived from a third-party [private contractor] on-site review system for evaluating motor carriers? What do you perceive them to be?

Commenters were almost evenly split between supporting and opposing the use of private contractors. Those commenters favoring the concept believed it would garner industry support and represent a better use of FMCSA's resources. Several commenters recommended contracting with trade associations or insurance companies, provided they were of the same caliber as U.S. Department of Transportation inspectors. Most commenters in this group also recommended that Federal and State Governments maintain the right to conduct inspections under certain circumstances. One commenter suggested using private contractors exclusively for data collection and not for enforcement actions.

Those commenters opposing the use of private contractors believed it would open the door to inappropriate interpretations of the rating methodology. They also contended that any resource savings could be canceled by FMCSA expenditures for training and monitoring of the contractors. The Transportation Lawyers Association noted that in an Office of the Inspector General's Report, dated March 26, 1997, the U.S. Department of Transportation stated its opposition to the use of private contractors because of legal considerations and the cost and complexity of developing and monitoring such a system.

Two commenters stated they would need more information about who pays and controls the private contractors, what role the Federal and State Governments would play, and who enforces the regulations before they can adequately respond to this question.

Question 16. If a third-party [private contractor] review system were to start up, what should be the Federal role in such a system?

Most commenters stated that the Federal Government should have significant involvement with private contractors by setting standards and providing guidance, certification, and training. However, a significant minority believed the Federal Government should take a more limited role, such as by monitoring private contractors through random audits and other methods. Several commenters asserted that the Federal Government should focus solely on compliance and enforcement issues.

Question 17. Could and should a private third-party [contractor] review system coexist with a Federal system? What would be their respective roles? What relationships should there be, if any, between coexisting Federal and private review systems?

Commenters had a range of opinions on this question. The most frequent recommendation was for the Federal Government to audit private contractors. Many commenters suggested using private contractors solely to collect data or, at the very most, to conduct an initial review that would be subject to FMCSA review. Other commenters recommended using private contractors only as consultants, who would assist motor carriers with improving their safety performance. In contrast, some commenters recommended training and certifying private contractors to conduct complete reviews in place of FMCSA.

Many commenters did not support a private contractor system because they doubted it could be implemented successfully. One commenter contended that such a system would likely increase the incidence of litigation against the agency by motor carriers receiving Unsatisfactory ratings.

Question 18. What should be the effect of the third-party [private contractor] rating on the carrier's operation? What kind of review procedures would be required?

Many commenters stated that a private contractor review should have the same effect on the motor carrier's operation as one conducted by the Federal Government. Other commenters advocated using private contractors strictly as consultants—the contractor would not rate the motor carrier. Still other commenters suggested the role of private contractors be limited to data collection. One commenter suggested making private contractor reviews voluntary but publishing the results for the benefit of the public.

Two commenters opposed the use of private contractors. One commenter argued that large motor carriers would have an economic advantage because they could more easily afford these private contractors.

With respect to review procedures, several commenters recommended establishing an appeals process for private contractor compliance reviews. One commenter recommended that FMCSA automatically review any Unsatisfactory rating assigned by a private contractor. Another commenter stated that private contractors should not be allowed to assign ratings.

Question 19. Should the information from third-party [private contractor] on-site reviews become a part of the FHWA [FMCSA] database? How should such information be treated?

Most, but not all, commenters supported including private contractor review information in the FMCSA database provided data-collection controls are in place. In addition, a majority of the commenters recommended using private contractor review data in the same way as the data collected by FMCSA. However, several commenters added that information collected by private contractors should be coded and continuously monitored to ensure safety data integrity and quality.

Question 20. Should a third-party reviewer [private contractor] have direct access to the FHWA's [FMCSA's] database to a greater extent than such information is presently available to the public?

Most commenters supported such access so long as a confidentiality agreement is in place. Other commenters suggested that private contractors be allowed access only to publicly available information in the FMCSA database. Several commenters specifically opposed allowing private contractors access to FMCSA databases. A few commenters said that private contractors should have access only to the motor carrier information needed to complete a review.

Question 21. Should there be standards for third-party [private contractor] reviews, including the identification of the relevant data elements to be employed for evaluative purposes? How should such standards be developed?

Nearly all commenters supported holding private contractors to defined standards. Most commenters believed contractor standards should mirror those standards used by FMCSA and its MCSAP-funded enforcement partners. One commenter recommended a task group to develop separate standards for private contractors.

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Notices

Federal Register
Vol. 70, No. 214
Monday, November 7, 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

Commodity Credit Corporation

Actions Taken To Ease Transportation Issues Exacerbated by Hurricane Katrina

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; Request for proposal.

SUMMARY: The Commodity Credit Corporation (CCC) is providing notification to all interested parties regarding additional actions pursuant to the September 20, 2005 announcement to ease transportation issues exacerbated by Hurricane Katrina. CCC is seeking proposals from interested parties for unloading barges of agricultural commodities located in the New Orleans area to make them available to transport 2005-crop agricultural commodities.

DATES: Proposals should be submitted November 14, 2005 to be assured consideration.

ADDRESSES: CCC invites interested persons to submit proposals on this notice. Proposals may be submitted by any of the following methods:

- E-Mail: Send proposals to: *Richard.Mashek@kcc.usda.gov.*
- Fax: Send proposals to (816) 823–1805.
- Mail: Send proposals to: Contract Reconciliation Division, ATTN: Rick Mashek, P.O. Box 419205, Stop 8758, Kansas City, MO 64133–4676.
- Hand Delivery or Courier: Deliver proposals to 6501 Beacon Drive, STOP 8758, Kansas City, MO 64133.

FOR FURTHER INFORMATION CONTACT: James Goff, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553, telephone (202) 720–5396, fax (202) 690–3123, e-mail: *James.Goff@wdc.usda.gov.* Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: On September 20, 2005, CCC announced additional steps to reduce further stress on the grain transportation system caused by Hurricane Katrina. The industry-focused actions outlined in the press release include assisting with the movement of barges of agricultural commodities from New Orleans, providing incentives for alternative storage of grain, and encouraging alternative shipping patterns to relieve pressure on the Mississippi River transportation system. The goals of these actions were to create velocity and capacity in the transportation system and to take advantage of under-utilized handling facilities. In a **Federal Register** Notice emergency-filed by the Office of the Federal Register for public inspection on September 30, 2005, and published October 5, 2005 (70 FR 58179), CCC requested proposals related to these steps be submitted to USDA by October 5, 2005. This notice is seeking additional proposals from interested parties related to unloading barges of agricultural commodities in New Orleans to make the barges available to transport 2005-harvested commodities.

The CCC Charter Act (15 U.S.C. 714 *et. seq.*) provides the authority for this action. Specifically, sections 5(b) and 5(d) (15 U.S.C. 714c(b) and 714c(d)) allow CCC to make available materials and facilities required in connection with the production and marketing of agricultural commodities, and allows CCC to remove and dispose of, or aid in the removal and disposition of, surplus agricultural commodities.

Barges containing agricultural commodities originally loaded and shipped to the New Orleans area for export or further processing remain without an outlet because of conditions caused by Hurricane Katrina. Some of the agricultural commodities stored on the barges have deteriorated in quality, further limiting possible outlets.

CCC will provide up to $7.6 million in funding for this initiative. CCC will consider all proposals on a competitive basis, but will not consider proposals in excess of $30 per ton. This per-ton cap reflects current barge freight rates as shown below:

BARGE TRANSPORTATION RATES

[Dollars per short ton]

2005					2004				
	This week	Next month	2 months out	3 months out		This week	Next month	2 months out	3 months out
Minneapolis-St. Paul									
8/3/2005	20.49	23.58	25.56	22.35	8/4/2004	13.68	17.27	18.57	17.27
8/10/2005	21.48	24.51	25.07	22.59	8/11/2004	13.93	17.58	18.57	17.33
8/17/2005	23.83	25.19	25.07	22.59	8/18/2004	14.55	17.52	18.88	17.39
8/24/2005	23.15	25.13	25.56	22.96	8/25/2004	14.18	17.39	18.57	17.52
8/31/2005	31.57	31.32	27.86	27.11	9/1/2004	14.24	18.63	16.90	closed
9/7/2005	33.18	34.54	30.95	closed	9/8/2004	14.24	18.63	16.90	closed
9/14/2005	34.05	37.26	31.26	closed	9/15/2004	19.44	20.86	17.95	closed
9/21/2005	30.02	33.30	28.16	closed	9/22/2004	20.74	21.48	17.52	closed
9/28/2005	33.92	35.90	29.90	closed	9/29/2004	23.65	23.71	18.57	closed
10/5/2005	36.71	32.93	closed	closed	10/6/2004	24.76	20.80	closed	closed
10/12/2005	41.66	35.90	closed	closed	10/13/2004	20.74	19.37	closed	closed

BARGE TRANSPORTATION RATES—Continued

[Dollars per short ton]

2005					2004				
	This week	Next month	2 months out	3 months out		This week	Next month	2 months out	3 months out
10/19/2005	38.69	35.16	closed	closed	10/20/2004 ...	19.93	19.93	closed	closed
10/26/2005	44.26	39.93	closed	closed	10/27/2004 ...	23.65	22.22	closed	closed
St. Louis									
8/3/2005	9.46	12.37	13.29	10.93	8/4/2004	7.18	10.29	10.69	7.46
8/10/2005	10.93	13.21	13.77	11.25	8/11/2004	7.14	10.45	10.77	7.46
8/17/2005	13.09	14.48	14.36	11.21	8/18/2004	8.70	10.57	10.89	7.42
8/24/2005	14.08	14.88	15.36	11.33	8/25/2004	8.30	10.81	10.89	7.42
8/31/2005	23.94	21.95	18.95	13.69	9/1/2004	8.46	10.77	7.70	6.30
9/7/2005	27.33	22.62	19.95	12.97	9/8/2004	10.33	10.97	7.70	6.42
9/14/2005	28.05	24.34	18.47	13.49	9/15/2004	14.88	12.77	8.10	6.58
9/21/2005	20.31	22.46	16.48	13.17	9/22/2004	15.56	13.09	10.61	6.62
9/28/2005	28.53	23.94	17.48	13.33	9/29/2004	16.52	13.73	9.54	7.02
10/5/2005	30.76	18.83	14.28	13.69	10/6/2004	16.08	9.30	7.38	7.22
10/12/2005	36.75	19.15	15.08	14.12	10/13/2004 ...	12.25	9.30	7.02	6.98
10/19/2005	25.62	18.87	14.88	14.32	10/20/2004 ...	11.05	9.62	7.26	7.26
10/26/2005	21.35	17.44	14.36	14.12	10/27/2004 ...	14.68	10.93	7.78	7.90

I. Unloading Barges of Agricultural Commodities

CCC will consider proposals and enter into agreements with operators to unload barges of agricultural commodities located in the New Orleans area for the purpose of making the barges available to move 2005-crop commodities. CCC has not and will not take title to the agricultural commodity. The barges must have been loaded and shipped to the New Orleans area before August 29, 2005, when Hurricane Katrina made landfall. The barges must be unloaded by December 1, 2005, unless extended in writing by CCC, to accelerate barge availability to geographical areas under harvest pressure. There are no restrictions on the actual unload location, final destination or disposition of the agricultural commodities; however there must not be a negative market impact. This offer of economic assistance is only available to unload barges of agricultural commodities and facilitate barge availability.

II. Proposal Requirements

Proposals must include the following information:

(1) Number of barges that contain agricultural commodities;

(2) Type of agricultural commodity;

(3) Quantity of agricultural commodities;

(4) Market value of the agricultural commodity as of date proposal is submitted:

(5) Current location;

(6) Date the barges arrived in the New Orleans area;

(7) Location where barge will be discharged, if different from item 4 above;

(8) Proposed disposition and compensation received for the sale of the agricultural commodity;

(9) Dollar amount per ton of assistance requested, not to exceed $30 per ton;

(10) Whether the loss or damage to the agricultural commodity was covered by an insurance policy and, if so, the amount of indemnity received; and

(11) A point of contact with applicable phone number, facsimile number, e-mail address and mailing address.

Operators entering into agreements with CCC will be required to meet certain documentation and certification requirements. These requirements will allow CCC to verify the unloading of the barges, the quantity and value of the agricultural commodity, and any compensation received for the final disposition of the agricultural commodity.

III. Proposal Evaluation Criteria and Award

Proposals must be evaluated objectively in accordance with the regulations on ''Competition in the awarding of discretionary grants and cooperative agreements'' found at 7 CFR part 3015.158. The following criteria must be used equally in the evaluation:

(1) Proposal's cost in relation to the agricultural commodity's current market value;

(2) Net positive impact on barge availability; and

(3) Overall cost-effectiveness of proposal.

CCC will notify interested parties of approval of their proposal.

Signed at Washington, DC November 1, 2005.

Teresa C. Lasseter,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 05–22239 Filed 11–3–05; 1:51 pm]

BILLING CODE 3410–05–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, November 9th, 2005, 2–4:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly

frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 203–4545.

Dated: November 1, 2005.

Carol Booker,

Legal Counsel.

[FR Doc. 05–22236 Filed 11–3–05; 12:39 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–899

Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China

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

EFFECTIVE DATE: November 7, 2005.

SUMMARY: We preliminarily determine that artist canvas from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Michael Holton, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–3818 or 482–1324, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On March 31, 2005, the Department of Commerce (''Department'') received a Petition on imports of certain artist canvas from the PRC (''Petition'') filed in proper form by Tara Materials Inc. (''Tara'' or ''Petitioner'') on behalf of the domestic industry and workers producing certain artist canvas. On April 7, 2005, the Department clarified that the official filing date for the Petition was April 1, 2005, and that the proper period of investigation (''POI'') is July 1, 2004, through December 31, 2004. *See Memorandum from Edward Yang to Barbara Tillman: Decision Memo Concerning Petition Filing Date and Period of Investigation*, April 7, 2005. On April 7, 2005, and April 14, 2005, the Department requested clarification of certain areas of the Petition and received responses to those requests on April 12, 2005, April 15, 2005, and April 18, 2005. This investigation was initiated on April 28, 2005. *See Initiation of Antidumping Duty Investigation: Certain Artist Canvas from the People's Republic of China*, 70 FR 21996 (April 28, 2005) (''*Notice of Initiation*''). Additionally, in the *Notice of Initiation*, the Department applied the modified process by which exporters and producers may obtain separate–rate status in NME investigations. The new process requires exporters and producers to submit a separate–rate status application. *See Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005), (''Policy Bulletin 05.1'') available at http://ia.ita.doc.gov/policy/bull05–1.pdf. However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

On April 28, 2005, the Department requested quantity and value (''Q&V'') information from a total of six producers of artist canvas in the PRC which were identified in the petition and for which the Department was able to locate contact information. On April 28, 2005, the Department also sent the Government of the PRC a letter requesting assistance in locating all known Chinese producers/exporters of artist canvas who exported artist canvas to the United States during the POI, July 1, 2004, through December 31, 2004. In addition, on May 11, 2005, in response to a request from ColArt Americas Inc. (''ColArt''), the Department requested Q&V information from ColArt.

On May 16, 2005, the Department received Q&V responses from four Chinese producers/exporters of artist canvas: Hangzhou Haili Electronic Equipment Co., Ltd. (''Haili''); ColArt; Ningbo Conda Import & Export Co., Ltd. (''Ningbo Conda''); and Wuxi Phoenix Artist Materials Co., Ltd. (''Phoenix Materials''). On May 16, 2005, the Department also received a Q&V response from Textus Industries stating that it is a U.S. importer and it is not a producer or exporter of subject merchandise. The Government of the PRC did not respond to the Department's April 28, 2005, letter requesting assistance in identifying producers and exporters of the subject merchandise in the PRC. On June 2, 2005, the Department requested clarifying Q&V information from Haili, ColArt, Ningbo Conda and Phoenix Materials. On June 6, 2005, we received responses from Haili, ColArt, Ningbo Conda and Phoenix Materials clarifying their Q&V information.

On May 13, 2005, the Department requested comments from all interested parties on proposed control numbers (''CONNUMs'') to be assigned the subject merchandise. On May 23, 2005, we received comments from: Michaels Stores, Inc., Aaron Brothers, Macpherson's ColArt Americas Inc., Crafts, Etc!, Ltd./Hobby Lobby Stores, Inc., and Jerry's Artarama, Inc. (collectively, ''Importers''); Petitioner; and Phoenix Materials.

On May 24, 2005, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of certain artist canvas. The ITC's determination was published in the **Federal Register** on May 24, 2005. *See Investigation Nos. 731–TA–1091 (Preliminary), Artists' Canvas from China*, 70 FR 29781 (May 24, 2005).

On May 25, 2005, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Acting Director, Office of Policy to Robert Bolling, Program Manager, China/NME Group, Office 8: Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated May 25, 2005 (''*Office of Policy Surrogate Countries Memorandum*'').

On May 27, 2005, the Department requested that the parties submit comments on surrogate country selection. On June 24, 2005, we received comments regarding the selection of a surrogate country from the Petitioner and from the Importers. Both the Petitioner and Importers argued that India is the appropriate surrogate country.

On May 27, 2005, we received separate rate applications from Hangzhou Foreign Relation & Trade Service Co. Ltd. (''HFERTS'') and Jiangsu Animal By–products Import & Export Group Corp. (''Jiangsu By–products''). On June 16, 2005, we

requested additional information from HFERTS regarding its separate rate application.

On June 9, 2005, the Department issued its respondent–selection memorandum, selecting the following two companies as mandatory respondents in this investigation: Ningbo Conda and Phoenix Materials. *See Memorandum from Wendy J. Frankel, Director, AD/CVD Enforcement, Office 8, to Edward Yang, Senior Enforcement Coordinator, China/NME Group, Selection of Respondents for the Antidumping Duty Investigation of Artist Canvas from the People's Republic of China (''Respondent Selection Memo'')*, dated June 9, 2005.

On June 13, 2005, the Department issued its Sections A, C, D, and E, questionnaire to Ningbo Conda and Phoenix Materials. On June 13, 2005, we also issued a Sections A, C, D, and E questionnaire to the Chinese Government (*i.e.*, Ministry of Commerce).

On June 27, 2005, Phoenix Materials requested that it be excused from submitting the factors of production spreadsheet contained in Appendix VI to the Department's original questionnaire. On July 14, 2005, we informed Ningbo Conda and Phoenix Materials that we had revised the factors of production spreadsheet, and created a spreadsheet for this investigation that both respondents are required to complete.

On July 1, 2005, we provided a one-week extension until July 11, 2005, to Ningbo Conda for its response to our Section A questionnaire. Additionally, on July 5, 2005, we provided a two–business day extension until July 7, 2005, to Phoenix Materials for its response to our Section A questionnaire. Further, on July 13, 2005, we provided an extension until July 25, 2005, to all mandatory respondents to respond to Sections C, D, and E of the questionnaire. For a detailed discussion on specific mandatory respondent extensions, please see the company–specific section for each mandatory respondent below.

On July 29, 2005, the Department determined that India was the appropriate surrogate country to use in this investigation. *See Memorandum to Wendy J. Frankel, Director, AD/CVD Enforecement, Office 8, from Michael Holton, Case Analyst, through Robert Bolling, Program Manager: Antidumping Duty Investigation on Certain Artist Canvas from the People's Republic of China (''Surrogate–Country Memorandum'')*, dated July 29, 2005. We received comments from interested parties regarding our selection of India as the surrogate country. For a detailed discussion of the comments regarding the surrogate country, please see the ''Surrogate Country'' section below. Additionally, on July 13, 2005, we extended the time period for interested parties to provide surrogate values for the factors of production until August 1, 2005. On July 29, 2005, we received a request from the Importers to further extend the deadline for supplying surrogate–value information. On August 1, 2005, we informed all interested parties that we were again extending the time period to provide surrogate–value information until August 5, 2005.

On August 5, 2005, Petitioner, Ningbo Conda, and Phoenix Materials submitted surrogate–value information. On September 2, 2005, Petitioner submitted comments on respondents' surrogate–value information.

On August 11, 2005, Petitioner made a timely request pursuant to 19 CFR §351.205(e) for a twenty–nine day postponement of the preliminary determination, until October 7, 2005. On August 19, 2005, the Department published a postponement of the preliminary antidumping duty determination on artist canvas from the PRC. *See Notice of Postponement of the Preliminary Determination of Certain Artist Canvas from the People's Republic of China Antidumping Duty Investigation*, 70 FR 48667 (August 19, 2005). Additionally, on September 29, 2005, Petitioner made another timely request pursuant to 19 CFR §351.205(e) for an additional twenty–one day postponement of the preliminary determination, until October 28, 2005. On October 13, 2005, the Department published a postponement of the preliminary antidumping duty determination on artist canvas from the PRC. *See Notice of Postponement of the Preliminary Determination of Certain Artist Canvas from the People's Republic of China Antidumping Duty Investigation*, 70 FR 59718 (October 13, 2005).

Company–Specific Chronology

As described above, the Department staggered its issuance of sections of the antidumping questionnaire to the mandatory respondents. Upon receipt of the various responses, the Petitioners provided comments and the Department issued supplemental questionnaires. The chronology of this stage of the investigation varies by respondent. Therefore, the Department has separated by company the following discussion of its information–gathering process after issuance of the questionnaire.

Ningbo Conda

On May 27, 2005, Ningbo Conda submitted a separate rate application. On July 11, 2005, Ningbo Conda submitted its response to Section A of the questionnaire. On July 25, 2005, Ningbo Conda submitted its response to Sections C and D of the questionnaire. On August 3, 2005, the Department issued a Supplemental Section A questionnaire covering Ningbo Conda's July 11, 2005, Section A response. On July 28, 2005, Petitioners submitted deficiency comments on the Section A response of Ningbo Conda. On August 19, 2005, Ningbo Conda submitted its response to the Supplemental Section A questionnaire. On August 15, 2005, Petitioners submitted deficiency comments on the Sections C and D responses of Ningbo Conda. On August 18, 2005, the Department issued a Supplemental Sections C and D questionnaire covering Ningbo Conda's July 25, 2005, Sections C and D response. On September 9, 2005, Ningbo Conda submitted its response to the Department's August 18, 2005, Supplemental Sections C and D questionnaire. On September 14, 2005, the Department issued a Supplemental Sections A and C questionnaire requesting financial information and a new U.S. sales database. On September 21, 2005, Ningbo Conda submitted its response to the Department's September 14, 2005, Supplemental Sections A and C questionnaire. On September 21, 2005, the Department issued a Supplemental Sections A, C, and D questionnaire covering Ningbo Conda's responses. On September 28, 2005, Ningbo Conda submitted its response to the Department's Supplemental Sections A, C, and D questionnaire. On October 3, 2005, Petitioners submitted comments regarding Ningbo Conda's September 28, 2005, response. On October 3, 2005, the Department issued a Supplemental Sections A, C, and D questionnaire covering Ningbo Conda's responses. On October 7, 2005, the Department issued a Supplemental Sections C questionnaire covering Ningbo Conda's responses. On October 4, 2005, Ningbo Conda's U.S. affiliate submitted a response to the Department's September 21, 2005, Supplemental Sections A, C, and D questionnaire. On October 19, 2005, Ningbo Conda submitted a response to the Department's October 3, 2005, Supplemental Sections A, C, and D questionnaire. On October 19, 2005, Ningbo Conda submitted a response to the Department's Supplemental Sections C questionnaire.

Phoenix Materials

On July 7, 2005, Phoenix Materials submitted its response to Section A of the questionnaire. On July 25, 2005, Phoenix Materials submitted its response to Sections C and D of the questionnaire. On July 25, 2005, the Department issued a Supplemental Section A questionnaire covering Phoenix Materials' July 7, 2005, Section A response. On July 28, 2005, Petitioners submitted deficiency comments on the Section A responses of Phoenix Materials. On August 10, 2005, Phoenix Materials submitted its response to the Supplemental Section A questionnaire. On August 15, 2005, Petitioners submitted deficiency comments on the Sections C and D responses of Phoenix Materials. On August 19, 2005, the Department issued a Supplemental Section A–D questionnaire covering Phoenix Materials' July 28, 2005, Sections C and D response and its August 10, 2005, response to the Supplemental Section A questionnaire. On September 9, 2005, Phoenix Materials submitted its response to the Supplemental Sections A–D questionnaire issued on August 19, 2005. On September 20, 2005, the Department issued a Second Supplemental A–D questionnaire to Phoenix Materials. On September 30, 2005, Phoenix Materials submitted its response to the Second Supplemental A–D questionnaire.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the Petitioners. The Department's regulations at 19 CFR 351.210(e)(2) require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On October 5, 2005, Ningbo Conda requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days until 135 days after the publication of the preliminary determination. As well, on October 26, 2005, Phoenix Materials requested that, in the event of an affirmative preliminary determination, the Department postpone its final determination by 60 days until 135 days after the publication of the preliminary determination. Additionally, Ningbo Conda and Phoenix Materials requested that the Department extend the provisional measures under Section 733(d) of the Act. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, pursuant to 735(a)(2) of the Act, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination and are extending the provisional measures accordingly.

Period of Investigation

The POI is July 1, 2004 through December 31, 2004. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (March 31, 2005). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat. Priming/coating includes the application of a solution, designed to promote the adherence of artist materials, such as paint or ink, to the fabric. Artist canvases (*i.e.*, pre–stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats) are tightly woven prepared painting and/or printing surfaces. Artist canvas and stretcher strips (whether or not made of wood and whether or not assembled) included within a kit or set are covered by this proceeding.

Artist canvases subject to this investigation are currently classifiable under subheadings 5901.90.20.00 and 5901.90.40.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this investigation are tracing cloths, ''paint–by-number'' or ''paint–it-yourself'' artist canvases with a copyrighted preprinted outline, pattern, or design, whether or not included in a painting set or kit.[1] Also excluded are stretcher strips, whether or not made from wood, so long as they are not incorporated into artist canvases or sold as part of an artist canvas kit or set. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Notice of Initiation* (*see* 70 FR at 21996).

The Department received numerous scope comments from a variety of interested parties. On May 18, 2005, the Importers provided scope comments concerning three product categories that they believe should be excluded from the scope of the investigation: (1) kits; (2) bleached canvas; and (3) splined canvas. Additionally, on May 18, 2005, Phoenix Materials requested confirmation that two products were outside the scope of the investigation: (1) artist canvas panels that are pre–printed with copyrighted ''paint–by-number'' outlines; and (2) artist canvas panels that are pre–printed with copyrighted ''paint–by-number'' outlines that are sold within a boxed ''painting set.''

On May 26, 2005, Petitioner responded to the above–mentioned comments stating that the Department should reject the exclusion requests of the Importers and Phoenix Materials. Additionally, on May 18, 2005, Design Ideas, Ltd. (''Design Ideas'') (a U.S. Importer) provided scope comments arguing that the artist canvas it imports from the PRC produced by Hangzhou Haili is outside the scope of the investigation because India, not the PRC is the country of origin of the product. On June 2, 2005, Petitioner provided a rebuttal to Design Ideas' May 18th submission wherein Petitioner stated that the Department should deny Design Ideas' exclusion request for artist canvas produced by Hangzhou Haili. On July 1, 2005, Design Ideas responded to Petitioners' June 2nd submission, stating that it is clear from the record that India is the country of origin of its imported artist canvas. On July 25,

[1] Artist canvases with a non-copyrighted preprinted outline, pattern, or design are included in the scope, whether or not included in a painting set or kit.

2005, Petitioner responded to Design Ideas' July 1st submission stating that this submission provided no support or citation for granting Design Ideas' exclusion request and Petitioner stated that the Department should deny Hangzhou Haili's exclusion request. On August 10, 2005, Design Ideas responded to Petitioners' July 25th submission, stating that it is clear from the record that the artist canvases produced by Hangzhou Haili in the PRC using gesso primed canvas from India and imported into the United States are not within the scope of the investigation. On August 17, 2005, the Importers responded to both Design Ideas and Petitioner comments stating that it supports Design Ideas' request that artist canvases produced by Hangzhou Haili from gesso primed canvas produced in India should be excluded from the scope of the investigation. On September 2, 2005, Petitioner responded to both the August 10th and 17th submissions, wherein Petitioner stated that it continues to believe there is no basis to grant Design Ideas' request.

Further, as part of this process, the Department has fully summarized and addresses all of the comments received to date in a memorandum to the file. *See Memorandum to the File from Michael Holton, Case Analyst, to Wendy Frankel, Office Director, Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China: Summary on Comments to the Scope*, dated October 28, 2005 (''*Scope Memorandum*'').

For this preliminary determination, the Department has made determinations with respect to artist canvas kits, paint–by-number artist canvas, bleached canvas, and splined canvas in the *Scope Memorandum*. However, the Department has not yet determined whether artist canvas primed in India but processed and exported from the PRC is within the scope of this investigation. Nonetheless, the Department intends to issue a preliminary finding on whether artist canvas primed in India but processed and exported from the PRC is within the scope of this investigation. We will afford interested parties an opportunity to provide comments on our preliminary finding on this issue in their pre–hearing briefs.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted–average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we limited our examination to the two exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. Ningbo Conda and Phoenix Materials, the exporters accounting for the largest volume of exports to the United States, account for a significant percentage of all exports of the subject merchandise from the PRC during the POI and were selected as mandatory respondents. *See Respondent Selection Memo* at 4.

Non–Market-Economy Country

For purposes of initiation, the Petitioners submitted LTFV analyses for the PRC as a non–market economy. *See Notice of Initiation* 70 FR at 21997. In every case conducted by the Department involving the PRC, the PRC has been treated as an Non–Market Economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (''TRBs'') From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Final Results of 2001–2002 Administrative Review: TRBs from the People's Republic of China*, 68 FR 70488 (December 18, 2003). Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the normal value section below.

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Office of Policy Surrogate Countries Memorandum*. Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of subject merchandise and whether the data for valuing factors of production is both available and reliable.

On June 24, 2005, the Department received arguments from interested parties on the surrogate country. Petitioner argues that India is the appropriate surrogate country for this investigation because India is at a comparable level of economic development with the PRC based on the Department's repeated use of India as a surrogate. Petitioner argues that India is a significant producer of identical and comparable merchandise. Additionally, Petitioner contends that India provides publicly available information on which to base surrogate values.

Also, on June 24, 2005, the Importers argue that India is the only country that appears to meet the Department's criteria for a surrogate country based on economic comparability, significant production of comparable merchandise, and the availability of factor data. *See* the *Selection of a Surrogate Country Memorandum* dated August 3, 2004, for a complete description of the interested parties surrogate country arguments.

Consequently, we have made the following determination about the use of India as a surrogate country: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 733(c)(4) of the Act; and (3) we have reliable data from India that we can use

to value the factors of production. *See Selection of a Surrogate Country Memorandum*. Thus, we have calculated normal value using Indian prices when available and appropriate to value the factors of production of the artist canvas producers. We have obtained and relied upon publicly available information wherever possible. *See Memorandum to the File from Jon Freed, Case Analyst, through Robert Bolling, Program Manager, and Wendy Frankel, Office Director: Certain Artist Canvas from the People's Republic of China: Factors Valuation Memorandum for the Preliminary Determination*, dated October 7, 2005 (''*Factor–Valuation Memorandum*'').

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.

Affiliation

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (''*SAA*''), H.R. Doc. 103–316 (1994), indicates that stock ownership is not the only evidentiary factor that the Department may consider to determine whether a person is in a position to exercise restraint or direction over another person, *e.g.*, control may be established through corporate or family groupings, or joint ventures and other means as well. *See SAA* at 838. *See also Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review*, 61 FR 42833, 42853 (August 19, 1996); and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53810 (October 16, 1997).

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) (''*Mushrooms*''), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 70 FR 54361 (September 14, 2005).

Ningbo Conda

Following these guidelines, we preliminarily determine that members of the Ningbo Conda Group (*i.e.*, Ningbo Conda and Conda (Ningbo) Painting Material Mfg. (''Conda Painting'')) are affiliated pursuant to Section 771(33) of the Act. We also preliminarily determine that the Ningbo Conda Group should be treated as a single entity for the purposes of the antidumping investigation of certain artist canvas from the PRC.

Further, based on our examination of the evidence presented in Ningbo Conda's questionnaire responses, we preliminarily find that Jinhua Universal Canvas Manufacturing Co., Ltd. (''Jinhua Universal'') is affiliated with the Ningbo Conda Group pursuant to sections 771(33)(B), (E), (F) and (G) of the Act and should be treated as a single entity with the Ningbo Conda Group for purposes of calculating a dumping margin in this investigation. *See Mushrooms*, 69 FR 10410, 10413 (March 5, 2004), *see also, Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1339–1345 (CIT 2003). We made this determination based on record evidence from Ningbo Conda's questionnaire responses that stated that Ningbo Conda, Conda Painting, and Jinhua Universal share the same director and the same director directly or indirectly owns and controls more than five percent of outstanding stock of each of these companies.

Further, evidence presented in Ningbo Conda's questionnaire responses indicates that during the POI the Ningbo Conda Group sold subject merchandise to a U.S. reseller. The Department preliminary determines that under sections (711)(33)(E), (F), and (G) of the Act, this reseller is affiliated with several other entities all owned and controlled by the parent corporation. These entities are referred to as Group A in the affiliation memorandum. For the purposes of this analysis, we have treated Group A as a single entity.

Additionally, we have determined that Group A and Jinhua Universal are affiliated parties, consistent with record evidence, the Department's practice and sections 771(33)(E) and (F) of the Act. We made this determination based on record evidence from Ningbo Conda's questionnaire responses that stated that Group A's parent corporation directly or indirectly owns and controls more than five percent of outstanding stock of Jinhua Universal.

Furthermore, we have determined that the Ningbo Conda Group and Group A are affiliated under sections 771(33)(F) of the Act. We made this determination based on record evidence from Ningbo Conda's questionnaire responses that stated that Ningbo Conda's and Group A's ownership of Jinhua Universal result in Ningbo Conda's and Group A's direct or indirect control of Jinhua Universal. Accordingly, we are using Group A's U.S. downstream sales to the first U.S. unaffiliated customer in our margin calculation. *See Memorandum to Wendy Frankel, Director, Office 8, NME/China Group, through Robert Bolling, Program Manager, From Michael Holton, Case Analyst, Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China: Affiliation of Ningbo Conda*, dated October 28, 2005 (''*Affiliation Memorandum*'').

Phoenix Materials

Following these guidelines, we preliminarily determine that Phoenix Materials, Wuxi Phoenix Stationary Co. Ltd (''Phoenix Stationary''), and Shuyang Phoenix Artist Materials Co. Ltd. (''Shuyang Phoenix''), collectively, (''Phoenix Group'') are affiliated pursuant to sections 771(33)(E) and (G) of the Act and that these companies should be treated as a single entity for the purposes of the antidumping investigation of artist canvas from the PRC. Based on our examination of the

evidence presented in Phoenix Materials' questionnaire responses, we have determined that: (1) Phoenix Materials controls a majority of Phoenix Stationary based on stock–ownership, and Phoenix Materials controls Shuyang Phoenix; (2) Phoenix Materials, Phoenix Stationary, and Shuyang Phoenix have overlapping managers and directors; and (3) Phoenix Materials and Phoenix Stationary share production facilities and production records. *See Memorandum to Wendy Frankel, Director, Office 8, NME/China Group, through Robert Bolling, Program Manager, From Jon Freed, Case Analyst, Antidumping Duty Investigation of Certain Artist Canvas from the People's Republic of China: Phoenix Affiliation and Treatment as a Single Entity of Phoenix Materials and its Members*, dated October 28, 2005 (''*Affiliation/ Single Entity Treatment Memorandum*'').

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The two mandatory respondents and the two Separate Rate Applicants have provided company–specific information and each has stated that it meets the standards for the assignment of a separate rate.

We have considered whether each of the four companies referenced above is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of the absence of *de jure* governmental control for Ningbo Conda Group (Ningbo Conda and its affiliated exporters, Conda Painting and Jinhua Universal), Phoenix Materials (and its affiliated exporter Phoenix Stationary), HFERTS, and Jiangsu By–products based on the criteria listed above. *See Memorandum to Wendy Frankel, Office Director, China/NME Group, through Robert Bolling, Program Manager, from Jon Freed and Michael Holton, Case Analysts, Certain Artist Canvas from the People's Republic of China: Separate Rates Memorandum (''Separate–Rates Memorandum'')*, dated October 7, 2005.

2. Absence of *De Facto* Control

Typically the Department considers the following four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We preliminarily determine that, for Ningbo Conda (and its affiliated exporters, Conda Painting and Jinhua Univeral), Phoenix Materials (and its affiliated exporter Phoenix Stationary), HFERTS, and Jiangsu By–products, the evidence on the record supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing the following: (1) each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by Ningbo Conda (and its affiliated exporters, Conda Painting and Jinhua Univeral), Phoenix Materials (and its affiliated exporter Phoenix Stationary), HFERTS, and Jiangsu By–products demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. However, although HFERTS has demonstrated an absence of government control, both in law and in fact, with respect to its exports of artist canvas, the Department has not determined the country of origin of the merchandise exported by HFERTS. Until the Department determines that HFERTS had exports of subject merchandise, HFERTS is not entitled to a separate rate. As a result, for the purposes of this preliminary determination, we have granted separate, company–specific rates to the mandatory respondents and their affiliates and to one of the separate rate applicants (Jiangsu By–products)

which shipped subject artist canvas to the United States during the POI. For a full discussion of this issue, please *see* the *Separate–Rates Memorandum*. If the Department determines that the merchandise exported by HFERTS is artist canvas from the PRC, the Department intends to assign HFERTS a separate rate.

PRC–Wide Rate

The Department has data that indicate there were more exporters of artist canvas from the PRC during the POI than those which responded to the Q&V questionnaire. *See Respondent Selection Memorandum* at 1. Although we issued the Q&V questionnaire to six known Chinese exporters of the subject merchandise, from these six we received four Q&V questionnaire responses, and one unsolicited Q&V questionnaire. Also, on June 13, 2005, we issued our complete questionnaire to the Chinese Government (*i.e.*, Ministry of Commerce). Although all exporters were given an opportunity to provide information showing they qualify for separate rates, not all of these other exporters provided a response to either the Department's Q&V questionnaire or its separate rate application. Therefore, the Department determines preliminarily that there were exports of the merchandise under investigation from PRC producers/exporters that did not respond to the Department's questionnaire. We treated these PRC producers/exporters as part of the countrywide entity. Further, the Government of the PRC did not respond to the Department's questionnaire.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Information on the record of this investigation indicates that there are numerous producers/exporters of artist canvas in the PRC. As described above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the volume of imports of subject merchandise from the PRC and the fact that information indicates that the responding companies did not account for all imports into the United States from the PRC, we preliminarily determine that certain PRC exporters of artist canvas failed to respond to our questionnaires. Additionally, in this case, the Government of the PRC did not respond to the Department's questionnaire. As a result, use of facts available pursuant to section 776(a)(2)(A) of the Act is appropriate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may employ adverse inferences. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also SAA* at 870. We find that, because the PRC–wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

In selecting from among the facts available, Section 776(b) of the Act authorizes the Department to use adverse–facts-available (''AFA'') information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. As AFA, we have assigned to the PRC–wide entity a margin based on information in the petition, because the margins derived from the petition are higher than the calculated margins for the selected respondents. In this case, we have applied a rate of 264.09 percent.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the *SAA* as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870. The *SAA* provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See id*. The *SAA* also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See id*. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 62 FR11825 (March 13, 2005), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The Petitioners' methodology for calculating the export price and normal value in the petition is discussed in the initiation notice. *See Notice of Initiation*, 70 FR at 21996–21997. To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents.

As discussed in the Memorandum to the File regarding the corroboration of the AFA rate, dated October 28, 2005, we found that the margin of 264.09 percent has probative value. *See Memorandum to The File Through Robert Bolling, Program Manager,*

China/NME Group, Corroboration for the Preliminary Determination of Certain Artist Canvas from the People's Republic of China, dated October 28, 2005, (''*Corroboration Memo*''). Accordingly, we find that the rate of 264.09 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate the PRC–wide rate to producers/exporters that failed to respond to the Q&V questionnaire or the separate rate application. This rate will also apply to exporters which did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The PRC–wide rate applies to all entries of the merchandise under investigation except for entries from the two mandatory respondents and one of the separate rate applicants. In addition, for the preliminary determination, the PRC–wide rate does not apply to artist canvas that is produced from bulk roll canvas coated in a third country and exported from the PRC.

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC–wide entity. *See Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002), unchanged in *Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003).

Margin for the Separate Rate Applicants

HFERTS and Jiangsu By–products, both exporters of artist canvas from the PRC, were not selected as mandatory respondents in this investigation but have applied for a separate rate and provided information to the Department for this purpose. However, as stated above, the Department has not yet determined whether HFERTS had exports of subject merchandise and, therefore, we are not assigning HFERTS a separate rate. We have established a weighted–average margin for Jiangsu By–products based on the rates we calculated for the two mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available. That rate is 70.28 percent. Jiangsu By–products is identified by name in the ''Preliminary Determination'' section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations state that, ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i); See also Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001).

After examining the questionnaire responses and the sales documentation that Ningbo Conda and the Phoenix Group placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for Ningbo Conda and the Phoenix Group. We made this determination based on record evidence which demonstrates that Ningbo Conda and the Phoenix Group invoices establish the material terms of sale to the extent required by our regulations. Thus, the record evidence does not rebut the presumption that invoice date is the proper date of sale. *See Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002).

Fair Value Comparisons

To determine whether sales of artist canvas to the United States by the two mandatory respondents were made at less than fair value, we compared export price (''EP'') or constructed export price (''CEP'') to normal value (''NV''), as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for both Ningbo Conda and the Phoenix Group, as appropriate, because the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States and because the use of CEP was not otherwise indicated. In accordance with section 772(b) of the Act, we used CEP for certain of Ningbo Conda's sales because the subject merchandise was sold in the United States after the date of importation by a U.S. reseller affiliated with the Ningbo Conda Group and Jinhua Universal.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, and inland freight from warehouse to unaffiliated U.S. customer) in accordance with section 772(c)(2)(A) of the Act. For a detailed description of all adjustments, *see Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Michael Holton, Case Analyst, Analysis for the Preliminary Determination of Certain Artist Canvas from the People's Republic of China: ColArt, Ningbo Conda Import & Export Co., Ltd.*, dated October 28, 2005, and *Memorandum to the File Through Robert Bolling, Program Manager, China/NME Group, From Jon Freed, Case Analyst, Analysis for the Preliminary Determination of Certain Artist Canvas from the People's Republic of China: Wuxi Phoenix Artist Materials Co., Ltd.*, dated October 28, 2005.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States for Ningbo Conda.

We compared NV to weighted–average EPs and CEPs in accordance with section 777A(d)(1) of the Act. Where appropriate, for Ningbo Conda, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit. For a detailed description of all adjustments, *see* the Company–Specific Analysis Memoranda dated October 28, 2005.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

The Department's questionnaire requires that the respondent provide

information regarding the weighted–average factors of production across all of the company's plants that produce the subject merchandise, not just the factors of production from a single plant. This methodology ensures that the Department's calculations are as accurate as possible. *See e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (Oct. 28, 2003); Issues and Decision Memorandum, Comment 19 (Oct. 20, 2003). Therefore, for the Phoenix Group, the Department calculated the factors of production using the weighted–average factor values for all of the facilities involved in producing the subject merchandise. For Ningbo Conda, the Department calculated normal values for each CONNUM based on the factors of production reported from each of Ningbo Conda's suppliers and then averaged the supplier–specific normal values together weighted by production quantity to derive a single, weighted–average normal value for each CONNUM exported by Ningbo Conda.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

For this preliminary determination, in accordance with past practice, we used data from the Indian Import Statistics or *Chemical Weekly* in order to calculate surrogate values for the mandatory respondents' material inputs. In selecting the best available information for valuing factors of production in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics and *Chemical Weekly* represents import data that is, contemporaneous with the POI, product–specific, and tax–exclusive. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to the Indian import–based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries are subsidized. *See Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002), *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) (''*CTVs from the PRC*''). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values. In instances where a market–economy input was obtained solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

The Department used the Indian Import Statistics to value the following raw material inputs, energy, and packing materials that Ningbo Conda and the Phoenix Group used to produce the subject merchandise during the POI: Linen Canvas, Cotton Canvas (bleached), Cotton Canvas (unbleached), Paulownia, Pine, Beech, Foam board, Three–ply board, Carton Roll, Fiberboard, Paint, Glue, Staple, Nail, Plastic, Paper, Sand Paper, Acrylic Polymer Resin, Amine PH Adjuster, Cellulose, Cinnamene (monomer of polystyrene), Lithopone, Octyl Phenol emulsifynig agent, Paraffin, Polyvinyl Alcohol, Polyvinyl chloride (PVC), Talcum Powder, Thickening Agent, Tributyl phosphate (TBP), VAE Latex (Vinyl acetate ethylene), Zinc Sulfide, Paper Label, Plastic sheet (shrink wrap), Wooden Peg, Plastic Peg, Labor, Electricity, Coal, Water, Box, Cardboard, Plastic Strap, Rubber band, and Tape. For a detailed description of all surrogate values used for respondents, *see Factor–Valuation Memorandum*.

The Department used *Chemical Weekly* to value the following material inputs used by Ningbo Conda and the Phoenix Group: Calcium Carbonate, Crylic acid, Dispersant, Isobutyl Methacrylate, Methacryl acid methyl, Polyethylene Resin, Propylene Glycol, Sodium Benzoate, Sodium Hydroxide/Caustic Soda, Stearic Acid, and Titanium Dioxide/Titanium Pigment, *see Factor–Valuation Memorandum*.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in August 2005, http://ia.ita.doc.gov/wages/index.html. The source of these wage–rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. See Factor–Valuation Memorandum

To value electricity, we used data from the International Energy Agency *Key World Energy Statistics* (2003

edition). Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor–Valuation Memorandum*.

The Department valued water using data from the Maharastra Industrial Development Corporation (www.midcindia.org) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor–Valuation Memorandum*.

The Department valued steam coal using the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook (''TERI Data''). The Department was able to determine, through its examination of the 2003/2004 TERI Data, that a) the annual TERI Data publication is complete and comprehensive because it covers all sales of all types of coal made by Coal India Limited and its subsidiaries, and b) the annual TERI Data publication prices are exclusive of duties and taxes. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor–Valuation Memorandum*.

We used Indian transport information in order to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *www.infreight.com*. This source provides daily rates from six major points of origin to five destinations in India during the POI. The Department obtained a price quote on the first day of each month of the POI from each point of origin to each destination and averaged the data accordingly. *See Factor–Valuation Memorandum*

The Department used two sources to calculate a surrogate value for domestic brokerage expenses. The Department averaged December 2003–November 2004 data contained in Essar Steel's February 28, 2005, public version response submitted in the AD administrative review of Hot–Rolled Carbon Steel Flat Products from India with October 2002–September 2003 data contained in Pidilite Industries' March 9, 2004, public version response submitted in the AD investigation of Carbazole Violet Pigment 23 from India. The brokerage expense data reported by Essar Steel and Pidilite Industries in their public versions is ranged data. The Department first derived an average per–unit amount from each source. Then the Department adjusted each average rate for inflation, Finally, the Department averaged the two per–unit amounts to derive an overall average rate for the POI. *See Factor–Valuation Memorandum*.

To value marine insurance, the Department obtained a price quote from http://www.rjgconsultants.com/insurance.html, a market–economy provider of marine insurance. See Factor–Valuation Memorandum.

To value international freight, the Department obtained price quotes from http://www.maersksealand.com/HomePage/appmanager/, a market–economy provider of international freight services. *See Factor–Valuation Memorandum*.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the audited financial statements for the fiscal year ending March 31, 2005, from Camlin Ltd., an Indian producer of artist canvas from India. *See Factor–Valuation Memorandum* for a full discussion of the calculation of the ratios from this financial statement.

Currency Conversion

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

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Notice of Initiation*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Notice of Initiation*, 70 FR 21996, 21999. This change in practice is described in *Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005), (''*Policy Bulletin 05.1*'') available at http://ia.ita.doc.gov/. The *Policy Bulletin 05.1*, states:

> ''[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.''

Policy Bulletin 05.1, at page 6.

Preliminary Determination

The weighted–average dumping margins are as follows:

ARTIST CANVAS FROM THE PRC - WEIGHTED–AVERAGE DUMPING MARGINS

Exporter	Producer	Weighted–Average Deposit Rate
NingboConda	Jinhua Universal	55.78
Ningbo Conda	Wuxi Silver Eagle Cultural Goods Co. Ltd.	55.78
Conda Painting	Wuxi Pegasus Cultural Goods Co. Ltd.	55.78
Jinhua Universal	Jinhua Universal	55.78
Phoenix Materials	Phoenix Materials	73.66
Phoenix Materials	Phoenix Stationary	73.66
Phoenix Materials	Shuyang Phoenix	73.66
Pheonix Stationary	Phoenix Materials	73.66
Pheonix Stationary	Phoenix Stationary	73.66
Pheonix Stationary	Shuyang Phoenix	73.66

ARTIST CANVAS FROM THE PRC - WEIGHTED–AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted–Average Deposit Rate
Jiangsu By–products	Jiangsu By–products	70.28
China–Wide Rate		264.09

Disclosure

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

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Because we have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of artist canvas, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22149 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–830

Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod from Mexico

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

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on carbon and alloy steel wire rod (''wire rod'') from Mexico for the period of review (''POR'') October 1, 2003, through September 30, 2004.

We preliminarily determine that during the POR, Hylsa Puebla, S.A. de C.V. (''Hylsa Puebla'') and Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V., and its affiliate, CCC Steel GmbH, collectively (''SICARTSA'') sold subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties equal to the difference between the export price (''EP'') and NV.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Jolanta Lawska at (202) 482–1767 or (202) 482–8362, respectively, AD/CVD Operations, Office 3, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Mexico; *see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29,2002). On October 1, 2004, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 69 FR 58889 (October 1, 2004).

On October 18, 2004, we received a request for review from SICARTSA: On October 27, 2004, we received a request for review from petitioners,[1] with respect to Hylsa Puebla and Sicartsa: On October 29, 2004, Hylsa Puebla and its

[1] The petitioners are ISG Georgetown (formerly Georgetown Steel Company), Gerdau Ameristeel U.S., Inc., (formely Co-Steel Raritan), Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

parent company Hylsamex, S.A. de C.V. (''Hylsamex''),[2] requested a review. These reviews were requested in accordance with 19 CFR 351.213(b)(2).

On November 19, 2004, we published the notice of initiation of this antidumping duty administrative review covering the period October 1, 2003, through September 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 67701 (November 19, 2003).

During the most recently completed segment of the proceeding in which SICARTSA participated, the Department found and disregarded sales that failed the cost test.[3] Pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (''the Act''), we had reasonable grounds to believe or suspect that sales by SICARTSA of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (''COP''). Therefore, we initiated a cost investigation of SICARTSA, and instructed the company to fill out sections A–D[4] of our initial questionnaire which was issued on December 9, 2003. SICARTSA submitted sections A–C on January 28, 2005, and its section D on February 11, 2005.

On February 24, 2005, petitioners submitted a sales–below-cost allegation against Hylsa Puebla. We determined that petitioners' cost allegations provided a reasonable basis to initiate a COP investigation of Hylsa Puebla's sales. *See* Letter from Petitioners alleging below–cost sales by Hylsa Puebla, dated February 24, 2005, in the case file in the Central Records Unit (''CRU''), main Commerce building, room B–099. Also, on July 7, 2005, we informed Hylsa Puebla that it was required to respond to section D of the antidumping questionnaire. See Letter from the Department to Hylsa Puebla requiring a section D questionnaire response, dated July 7, 2005, in the CRU. On August 8, 2005, Hylsa Puebla submitted its response to the section D questionnaire.

On April 26, 2005, the Department published an extension of preliminary results for this review, extending the preliminary results until October 31, 2005. *See Carbon and Certain Alloy Steel Wire Rod: Extension of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 321395 (April 26, 2005).

On June 20, 2005, the Department issued a supplemental section A–D questionnaire to SICARTSA. We received SICARTSA's response to the section A–D supplemental questionnaire on July 15, 2005. On August 8, 2005, the Department issued a supplemental section A–C questionnaire to Hylsa Puebla. On September 8, 2005, we issued Hylsa Puebla a supplemental section D questionnaire. We received the response to Hylsa Puebla's section A–C supplemental questionnaire on September 6, 2005, and a response to the section D supplemental questionnaire on September 30, 2005.

On October 17, 2005, we issued an additional supplemental questionnaire to SICARTSA pertaining to the company's level of trade (''LOT'') in the home and U.S. markets. Because we did not receive SICARTSA's questionnaire response until October 25, 2005, we are not incorporating the information in its response in these preliminary results. We invite interested parties to comment on how the Department should incorporate the information from SICARTA's October 25, 2005, questionnaire response into the final results.

Scope of Review

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length

[2] Hylsa Puebla is a wholly-owned subsidiary of Hylsa, S.A. de C.V., which in turn is wholly-owned by Hylsamex, a Mexican holding company.

[3] The most recently completed segment in which SICARTSA participated was the first administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 70 FR 25809 (May 16, 2005) (''*First Review of Wire Rod from Mexico*'').

[4] Section A: Organization, Accounting Practices, Markets and Merchandise

Section B: Comparison Market Sales

Section C: Sales to the United States

Section D: Cost of Production and Constructed Value

(measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[5]

[5] Effective January 1, 2004, CBP reclassified certain HTSUS numbers related to the subject merchandise. *See* http://hotdocs.usitc.gov/tariff__chapters__current/toc.html.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope of Review'' section, above, and sold in Mexico during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product or constructed value (''CV''): grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. Where there were no sales of the foreign like product in the home market suitable for matching to the subject merchandise, we used constructed value as the basis for normal value.

Comparisons to Normal Value

To determine whether sales of wire rod from Mexico were made in the United States at less than NV, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions. *See* the company–specific calculation memoranda, available in the CRU.

Export Price

For the price to the United States, we used EP in accordance with sections 772(a) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when Constructed Export Price was not otherwise warranted based on the facts on the record. We based EP on the packed cost–insurance-freight (''CIF''), ex–factory, free–on-board (''FOB''), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, U.S. brokerage, and U.S. inland freight expenses (freight from port to the customer).

In accordance with 19 CFR 351.401(c) and in keeping with our practice, we added interest, freight, and other revenue (*i.e.*, Mexican and U.S. brokerage and handling, and duty charged to customer) where applicable. *See, e.g.*, *Light–Walled Rectangular Pipe and Tube from Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 69 FR 19400, 19406 (April 13, 2004); unchanged in *Light–Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004).

Normal Value

A. *Selection of Comparison Markets*

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because each respondent had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

B. *Arm's–Length Test*

SICARTSA and Hylsa Puebla reported sales of the foreign like product to affiliated end–users and affiliated resellers. The Department calculates the NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm's–length. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's–length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's–length

prices. *See* 19 CFR 351.403(c); *see also*, *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002). Conversely, where sales to the affiliated party did not pass the arm's–length test, all sales to that affiliated party have been excluded from the NV calculation. *Id.* Both Hysla and SICARTSA had sales that did not pass the arm's–length test and were excluded from the NV calculation.

C. *Cost of Production (''COP'') Analysis*

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of SICARTSA and Hylsa Puebla, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted.

In the prior review we found that for iron ore and lime, major inputs in wire rod production, the affiliates' average COP exceeded the transfer price SICARTSA paid to its affiliated suppliers. *See Preliminary Results of Antidumping Duty Administrative Review of the Antidumping Duty: Carbon and Alloy Steel Wire Rod from Mexico*, 69 FR 64722, 64725 (November 8, 2004); unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 70 FR 25809 (May 16, 2005). In the current review, we preliminarily find that with respect to SICARTSA's affiliates, the average COP for iron ore exceeded the transfer price SICARTSA paid for those inputs. Therefore, pursuant to section 773(f)(3) of the Act, we applied the major input rule and adjusted SICARTSA's reported cost of manufacturing to account for purchases of iron ore from affiliated parties at non–arm's–length prices. We were unable to compare the transfer price for iron ore to a market price as there were no unaffiliated purchases or sales. *See* SICARTSA's February 11 2005 Questionnaire Response at Exhibit D–5 and page D–9. We therefore, adjusted SICARTSA's reported cost of manufacturing (''COM'') to reflect the higher COP. Regarding SICARTSA's purchases of lime from affiliated parties, we preliminarily find that its purchases were not large enough to warrant examining whether the purchases were at arm's length. *See* Exhibit D–5 of SICARTSA's February 11, 2005 response. This approach is consistent with the Department's practice. *See*, *e.g.*, Comment 26 of the Issues and Decision Memorandum that accompanied the *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold–Rolled Carbon Steel Flat Products From France*, 67 FR 62114 (October 3, 2002). Therefore, we have accepted SICARTSA's cost of lime inputs from its affiliated parties, as reported.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted–average COP to the per–unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. In accordance with the statute and the Department's practice, we determined the net comparison market prices for the below–cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. *See* section 773(b) of the Act; *see also Certain Steel Concrete Reinforcing Bars From Turkey: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part*, 69 FR 25063, 25066 (May 5, 2004); unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731 (November 8, 2004).

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for SICARTSA and Hylsa Puebla, for purposes of this administrative review, we disregarded below–cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* the company–specific calculation memoranda on file in the CRU for our calculation methodology and results.

D. *Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on ex–works, FOB or delivered prices to comparison market customers. We recalculated the starting price taking into account, where necessary, billing adjustments and early payment discounts. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions from the starting price, when appropriate, for rebates, handling, loading, inland freight, warehousing, inland insurance. In accordance with 19 CFR 351.401(c), we added interest revenue and other revenue, where applicable. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale (''COS'') adjustments for direct expenses, including imputed credit expenses, and warranty expenses in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR–average costs.

Sales of wire rod purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the ''Export Price'' section of this notice.

E. *Calculation of Normal Value Based on Constructed Value*

When we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs.

For price–to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. *Level of Trade*

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade as the EP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's–length) customers. If the comparison–market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

With respect to Sicartsa, for these preliminary results, we did not make a LOT adjustment because we did not find a LOT in the home market identical to the U.S. LOT, and thus we lacked the basis for quantifying the adjustment. This approach is consistent with the method employed in the prior administrative review. *See* page 5 of the November 1, 2004 memorandum to the file, ''Preliminary Calculation Memorandum for Siderurgica Lazaro Cardenas Las Truchas (SICARTSA)'' from Tipten Troidl, Case Analyst, Office of AD/CVD Operations III. As discussed above, we decided not to incorporate the information regarding LOT from Sicartsa's October 25, 2005, submission into these preliminary results. However, our finding on this issue may change in the final results.

In its questionnaire response, Hylsa Puebla did not claim a LOT adjustment. *See* Hylsa Puebla Sections B and C questionnaire response dated February 4, 2005 at page 28. Moreover, based on our analysis of the facts of this administrative review, we preliminarily determine that there is no substantial difference in the selling functions between the sales on which NV is based and the export transactions. All of Hylsa Puebla's U.S. sales are reported as EP sales. Thus, we have matched EP sales to sales in the home market without regard to level of trade and made no level of trade adjustment.

For a detailed description of our LOT methodology and a summary of company–specific LOT findings for these preliminary results, see the calculation memoranda, all on file in the CRU.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted–average margins exist for the period October 1, 2003, through September 30, 2004:

Manufacturer/exporter	Margin (percent)
Hylsa Puebla	4.97
SICARTSA	4.28

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific

rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 20.11 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55800 (August 30, 2002).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22147 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–827

Certain Cased Pencils from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

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

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery at (202) 482–3020, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUMMARY: On July 1, 2005, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on Certain Cased Pencils from the People's Republic of China (PRC). On the basis of a Notice of Intent to Participate, and an adequate substantive response filed on behalf of domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

SUPPLEMENTARY INFORMATION:

Background:

On July 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on Certain Cased Pencils from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (Sunset) Reviews*, 70 FR 38101 (July 1, 2005) (*Initiation Notice*). On July 14, 2005, the Department received a Notice of Intent to Participate from domestic interested parties, Sanford Corp.; General Pencil Co., Inc.; Rose Moon Inc.; Tennessee Pencil Co.; and Musgrave Pencil Co., within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. Sanford Corp.; General Pencil Co.; Inc.; Rose Moon Inc.; Tennessee Pencil Co.; and Musgrave Pencil Co. claimed interested party status under section 771(9)(C) of the Act, as manufacturers of cased pencils in the United States. On August 1, 2005, the Department received a complete substantive response from domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

Scope of the Order:

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242 from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

On June 3, 2005, the Department determined that certain Fiskars Brands, Inc.'s compasses are not included in the scope of the order. *See Notice of Scope Rulings*, 70 FR 55110 (September 29, 2005). The Department determined on February 18, 2005, that Rich Frog Industries Inc.'s certain decorated wooden gift pencils are within the scope of the order, and on March 5, 2005, in response to Target Corporation, that RoseArt Clip 'N Color is excluded from the scope of the order. *See Notice of Scope Rulings*, 70 FR 41347 (July 19, 2005). In response to a request by Barthco Trade Consultants, on May 22, 2003, the Department determined that twist crayons were outside the scope of the order. On September 29, 2004, in response to Target Corporation, the Department determined that the ''Hello Kitty Fashion Totes'' were outside the scope of the order. On September 29, 2004, in response to Target Corporation, the Department determined that ''Hello Kitty Memory Maker'' was outside the scope of the order and that ''Crayola the Wave'' was outside the scope of the order. *See Notice of Scope Rulings*, 70 FR 24533 (May 10, 2005). On February 9, 1998, in response to Creative Designs International, Ltd., the Department determined that ''Naturally Pretty,'' a young girl's 10 piece dress–up vanity set, including two 3–inch pencils, was

outside the scope of the order. *See Notice of Scope Rulings*, 63 FR 29700 (June 1, 1998). On September 15, 1997, the Department determined in response to Nadel Trading Corporation that a plastic ''quasi–mechanical'' pencil known as the Bensia pencil was outside the scope of the order. *See Notice of Scope Rulings*, 62 FR 62288 (November 21, 1997).

Analysis of Comments Received:

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

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

Final Results of Review:

We determine that revocation of the antidumping duty orders on cased pencils from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
China First Pencil Co., Ltd./ Three Star Stationery Industry Co.[1]	8.60
Shanghai Lansheng Corp.	19.36
Shanghai Foreign Trade Corp.	11.15
Guangdong Provincial Stationery & Sporting Goods Import & Export Corp.[2]	53.65
PRC–Wide Rate	53.65

[1] The Department determined that China First Pencil Co. Ltd. and Three Star Stationery Industry Co. (Three Star) should be treated as a single entity in the December 1, 1999 through November 30, 2000 review. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) (*1999-2000 Final Results*) and amended final results at 67 FR 59049 (September 19, 2002).

[2] The Department originally excluded from the order exports made by Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong) and produced by Three Star. However, the Department determined in the 1999-2000 review that the Guangdong/Three Star sales chain was no longer excluded from the order, and that all merchandise exported by Guangdong was subject to the cash deposit requirements at the PRC-wide rate. *See 1999-2000 Final Results*.

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22138 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–836)

Certain Cut–to-Length Carbon–Quality Steel Plate Products From the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department ofCommerce.

SUMMARY: In response to requests by a producer/exporter of the subject merchandise and a domestic interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut–to-length carbon–quality steel plate products (steel plate) from the Republic of Korea (Korea). This review covers one producer/exporter of the subject merchandise. The period of review (POR) is February 1, 2004, through January 31, 2005.

The Department has preliminarily determined that the company subject to this review made U.S. sales at prices less than normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We will issue the final results of review no later than 120 days from the publication date of this notice.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Malcolm Burke, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4162 or (202) 482–3584, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on steel plate from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 5136 (February 1, 2005). In accordance with 19 CFR § 351.213(b)(2), during February 2005, Dongkuk Steel Mill Co., Ltd. (DSM), a producer/exporter, requested that the Department conduct an administrative review of its sales and entries of subject merchandise into the United Stated during the POR. Additionally, in accordance with 19 CFR § 351.213(b)(1), on February 28, 2005, a domestic interested party, Nucor Corporation (Nucor), requested that the Department conduct a review of DSM; Korea Iron & Steel Co., Ltd. (KISCO); and Union Steel Manufacturing Co. (USMC). On March 23, 2005, the Department initiated an administrative review of DSM, KISCO, and USMC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

On March 9, 2005, the Department issued its antidumping questionnaire to DSM, KISCO, and USMC. On April 15, 2005, USMC informed the Department that it had no sales or shipments of the subject merchandise during the POR. On May 3, 2005, KISCO informed the Department that it had no sales or shipments of the subject merchandise during the POR. In April and May 2005, DSM responded to the Department's antidumping questionnaire. Subsequently, the Department issued supplemental questionnaires to DSM.

During this administrative review, Nucor and one of the petitioners in this proceeding, IPSCO Steel Inc., submitted comments regarding the respondent's questionnaire and supplemental questionnaire responses.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Period of Review

The POR is February 1, 2004, through January 31, 2005.

Scope of the Order

The products covered by the antidumping duty order are certain hot–rolled carbon–quality steel: (1) Universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut–to-length (not in coils) and without patterns in relief), of iron or non–alloy-quality steel; and (2) flat–rolled products, hot–rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut–to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non–rectangular cross-section where such non–rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') - for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non–metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non–metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion–resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. Imports of steel plate are currently classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. The HTSUS subheadings are provided for convenience and CBP purposes. The written description of the merchandise covered by the order is dispositive.

Partial Rescission of Review

As noted above, USMC and KISCO informed the Department that they had no shipments of subject merchandise to the United States during the POR. CBP data indicates that there were no entries of subject merchandise from USMC or KISCO during the POR. *See* the September 30, 2005, memorandum, Factual Information Regarding Lack of Entries of Subject Merchandise Produced by USMC and KISCO to the File from the Team, which is available in the Central Records Unit (CRU) room B099 in the main Department building. No parties have submitted any information that calls into question the no shipment claims of USMC and KISCO. Therefore, in accordance with 19 CFR § 351.213(d)(3), and consistent with the Department's practice, we are rescinding this review with respect to USMC and KISCO. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127, 53128 (September 9, 2003).

Duty Absorption

On March 28, 2005, Nucor requested that the Department make a duty absorption determination with respect to each respondent. Section 751(a)(4) of the Act provides that the Department, if requested, shall determine during an administrative review initiated two or four years after the publication of the order, ''whether antidumping duties have been absorbed by a foreign producer or exporter. . . if the subject merchandise is sold in the United States'' through an affiliated importer. Because the order on steel plate from Korea was published on February 10, 2000, and this review was initiated five years thereafter (on March 23, 2005), this review was not initiated two or four years after the publication of the order. Therefore, pursuant to section 751(a)(4) of the Act, the Department will not make a duty absorption determination in this review.

Affiliation

During the POR, DSM sold steel plate to Dongkuk Industries Co., Ltd. (DKI), a Korean trading company, which, in turn, resold the steel plate to unaffiliated parties in third country markets. Additionally, DSM reported that DKI formed a home market subsidiary to which it sold steel plate during the instant POR. The Department has preliminarily determined that DSM and DKI are under the common control of a family grouping, and thus, are affiliated pursuant to section 771(33)(F) of the Act (which states that two or more persons directly or indirectly controlling, controlled by, or under common control with, any person shall be considered affiliates). Therefore, in these preliminary results, the Department has treated DSM and DKI as affiliated parties. In addition, because the family grouping noted above is also in a position to legally and operationally control DKI's subsidiary, in these preliminary results the Department has considered the subsidiary and DSM to be affiliated parties. For a complete discussion of this issue see the Memorandum from Malcolm Burke to the File, dated concurrently with this notice.

Overrun Sales

DSM reported home market sales of ''overrun'' merchandise (*i.e.*, sales of a greater quantity of steel plate than the customer ordered due to overproduction). Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines ''ordinary course of trade'' as the ''conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' In past cases, the Department has examined certain factors to determine whether ''overrun'' sales are in the ordinary course of trade. *See, e.g. Certain Steel Products from Brazil*, 64 FR 38756, 38770 (July 19, 1999). These factors include: (1) whether the merchandise is ''off–quality'' or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market. Based on our analysis of these factors and the terms of sale, we preliminarily determine that DSM's overrun sales have characteristics that are not ordinary as compared to DSM's other home market sales of steel plate. Therefore, we preliminarily determine that DSM's overrun sales are outside the ordinary course of trade. Because our analysis makes use of business proprietary information, we have included the analysis in a separate memorandum. *See* Memorandum to the File from the Team concerning Overrun Sales Analysis: Dongkuk Steel Mill Co., Ltd., dated concurrently with this notice.

Comparison Methodology

In order to determine whether DSM sold steel plate in the United States at prices less than NV, the Department compared the constructed export price (CEP) of individual U.S. sales to the monthly weighted–average NV of sales of the foreign like product made in the ordinary course of trade. See section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. In accordance with section 771(16) of the Act, the Department considered all products within the scope of the order under review that the respondent sold in the comparison market during the POR to be foreign like products for purposes of determining appropriate product comparisons to steel plate sold in the United States. The Department compared U.S. sales to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to, to two months after, the month in which the U.S. sale is made. Where there were no sales of identical merchandise made in the comparison market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by DSM in the following order of importance: painted, quality, specification, heat treatments, thickness, width, patterns in relief, and descaling.

Constructed Export Price

The Department based the price of each of DSM's U.S. sales of subject merchandise on CEP, as defined in section 772(b) of the Act, because the merchandise was sold, before importation, by a seller affiliated with the producer, to unaffiliated purchasers in the United States. We calculated CEP using delivered prices charged to unaffiliated customers in the United States. In accordance with sections 772(c)(2)(A) and 772(d) of the Act, in calculating CEP, we made deductions from the starting price for foreign and U.S. brokerage and handling, foreign and U.S. inland freight, international freight, marine insurance, U.S. duties, direct and indirect selling expenses, to the extent they are associated with economic activity in the United States, and CEP profit. The direct selling expenses included credit expenses and commission expenses. Finally, pursuant to section 772(c)(1)(C) of the Act, we increased U.S. price by the amount of the export subsidy found in the countervailing duty investigation on steel plate from Korea.[1]

Normal Value

After testing home market viability, whether home market sales to affiliates were at arm's length prices, and whether home market sales were at below–cost prices, we calculated NV for DSM as noted in the ''Price–to-Price Comparisons'' section of this notice.

[1] See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea, 65 FR 6587 (February 10, 2000).

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the aggregate volume of DSM's home market sales of the foreign like product to the aggregate volume of its U.S. sales of subject merchandise. Because the aggregate volume of DSM's home market sales of foreign like product exceeds five percent of the aggregate volume of its U.S. sales of subject merchandise, we based NV on sales of the foreign like product in DSM's home market. *See* section 773(a)(1)(C) of the Act.

B. Affiliated–Party Transactions and Arm's–Length Test

DSM reported that it made home market sales to affiliated and unaffiliated end users and distributors/retailers. The Department may calculate NV based on sales to an affiliated party only if it is satisfied that the prices charged to the affiliated party are comparable to the prices at which sales were made to parties not affiliated with the producer, *i.e.*, sales at arm's–length. *See* section 773(f)(2) of the Act and 19 CFR § 351.403(c). Where we found the home market prices charged to an affiliated customer not to be arm's–length prices, we excluded sales to the affiliated customer from our analysis. To test whether DSM's sales to affiliates were made at arm's–length prices, the Department compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing costs. Pursuant to 19 CFR § 351.403(c), and in accordance with the Department's practice, when the prices charged to affiliated parties were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party were at arm's–length prices. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). DSM's affiliated home market customers did not pass the arm's–length test. Therefore, we have excluded these sales from our analysis.

C. Cost of Production (COP) Analysis

In the most recently completed administrative review, the Department determined that DSM sold foreign like product at prices below the cost of producing the merchandise and

excluded such sales from the calculation of NV. As a result, the Department determined that there are reasonable grounds to believe or suspect that during the instant POR, DSM sold the foreign like product at prices below the cost of producing the merchandise. *See* section 773(b)(2)(A)(ii) of the Act. Therefore, the Department initiated a sales below cost inquiry with respect to DSM.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each unique foreign like product sold by DSM during the POR, we calculated a weighted–average COP based on the sum of the respondent's materials and fabrication costs and selling, general and administrative (SG&A) expenses, including interest expenses, and packing costs. We relied on the costs submitted by DSM except for the following items, which we revised based upon our review of DSM's questionnaire responses: ceratin inputs purchased from affiliates and interest expense. For details regarding these revisions, *see* the memorandum regarding cost of production adjustments for the preliminary results, dated concurrently with this notice.

2. Test of Home Market Sales Prices

In order to determine whether sales were made at prices below the COP, on a product–specific basis, we compared DSM's weighted–average COPs, adjusted as noted above, to the prices of its home market sales of foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B), respectively, of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market sales prices, less applicable discounts or rebates, selling expenses, and movement charges.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in ''substantial quantities'' within an extended period of time (*i.e.*, one year) pursuant to sections 773(b)(2)(C) and (B) of the Act. Based on our comparison of POR average costs to reported prices, we also determined, in accordance with section 773(b)(2)(D) of the Act, that certain sales were made at prices which would not permit recovery of all costs within a reasonable period of time. As a result, we disregarded such below–cost sales.

Price–to-Price Comparisons

We calculated NVs for DSM based on the prices at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (LOT) as the comparison U.S. sale. *See* section 773(a)(1)(B) of the Act. In calculating NVs, where appropriate, we increased the reported home market sales prices by the interest and duty drawback revenue that DSM received from its customers and decreased the prices by movement expenses incurred by DSM. In addition, we adjusted the reported home market sales prices to: (1) account for differences between packing costs and credit and other direct selling expenses incurred with respect to transactions in the U.S. and home markets; (2) account for differences between the physical characteristics of the merchandise sold in comparable transactions in the U.S. and home markets; and, (3) to make a reasonable allowance for other selling expenses where commissions were paid in only one of the markets being compared. *See* section 773 (a)(6) of the Act and 19 CFR § 351.410 (e).

Level of Trade

To determine whether NV sales are at a different LOT than the CEP sales,[2] we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* section 773(a)(7)(A) of the Act. If the home market sales are at a different LOT, and the difference affects price comparability, as manifested by a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. In determining whether separate LOTs exist, we obtained information from DSM regarding the marketing stages for the reported U.S. and home market sales, including a description of the selling activities performed by DSM for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar. *See* 19 CFR § 351.412(c)(2). For CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

DSM reported that it sold the merchandise under review to distributors and end users in the home market through one channel of distribution, and to distributors in the United States through another channel of distribution. *See* DSM's April 29, 2005, and May 6, 2005, questionnaire responses at 13–14 and 11–12, respectively. In the home market channel of distribution, DSM engaged in the same selling activities for all sales. Likewise, in the U.S. channel of distribution, DSM engaged in the same selling activities for all sales. Because the single sales channel in the United States involves the same selling functions for all sales, and the single sales channel in the home market also involves the same selling functions for all sales, we have preliminarily determined that there is one LOT in the United States and one LOT in the home market. Moreover, because the selling functions and activities performed by DSM with respect to its home market sales were significantly dissimilar from those performed for its U.S. sales, we have preliminarily determined that, during the POR, DSM sold foreign like product at a different LOT than it sold subject merchandise. However, because no appropriate basis exists to determine whether the difference between the U.S. and home market LOTs affects price comparability,[3] we did not make a level

[2] The NV LOT is based on selling activities reflected in the starting-price of the sales in the comparison market. For CEP sales, the U.S. LOT is based on the selling activities reflected in the price after deducting expenses and profit under section 772(d) of the Act.

[3] There is only one LOT in the home market and no other information which would allow the Department to examine DSM's pricing patterns with respect to product lines that are different from, or broader than, the steel plate product line.

of trade adjustment. Nevertheless, we considered whether home market sales were at a more advanced LOT than the CEP sales, thus warranting a CEP offset under section 773(a)(7)(B) of the Act. In order to determine whether NV is at a more advanced LOT than the CEP transactions, the Department compared home market selling activities with those for CEP transactions after deducting the expenses identified in section 772(d) of the Act. After making these deductions, the Department determined that the differences between the home and U.S. market selling activities support a finding that DSM's sales in the home market were at a more advanced LOT than the CEP sales. *See* Memorandum from Malcolm Burke to the File, concerning Level of Trade and CEP Offset Analysis, dated concurrently with this notice. Thus, in calculating NV, we reduced DSM's home market sales prices in accordance with the CEP offset provision.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the relevant U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted- average dumping margin exists for the period February 1, 2004, through January 31, 2005:

Manufacturer/Exporter	Margin (percent)
Dongkuk Steel Mill Co., Ltd.	0.51

Public Comment

Within 10 days of publicly announcing the preliminary results of this review, we will disclose, to interested parties, any calculations performed in connection with the preliminary results. *See* 19 CFR § 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. *See* 19 CFR § 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice in the **Federal Register**, or the first workday thereafter. Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. Also, interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities cited. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline for issuing the final results of review is extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in the written comments, within 120 days of publication of this notice in the **Federal Register**.

Assessment Rates

In accordance with 19 CFR § 351.212(b)(1), in these preliminary results of review we calculated importer–specific assessment rates for DSM's subject merchandise. Within 15 days of publication of the final results of review, the Department will issue instructions to CBP directing it to assess the final importer–specific assessment rates (if above *de minimis*) uniformly on the entered value of all entries of subject merchandise made by the relevant importer during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act. In the instant matter: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review (except that if that rate is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required); (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 0.98 percent, which is the ''all others'' rate established in the LTFV investigation, adjusted for the export subsidy rate in the companion countervailingduty investigation. These cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review. *See* section 751(a)(2)(C) of the Act.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) 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 the antidumping duties occurred and the concomitant assessment of double antidumping duties.

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. 05–22137 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–357–802, A–583–803)

Light–Walled Welded Rectangular Carbon Steel Tubing from Argentina and Taiwan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On July 1, 2005, the Department of Commerce (the Department) initiated the second sunset reviews of the antidumping duty orders on light–walled welded rectangular carbon steel tubing from Argentina and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and no responses from respondent interested parties, the Department conducted expedited (120-day) sunset reviews. See section 751(c)(3)(B) of the Act. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would lead (or likely lead)

to continuation or recurrence of dumping at the levels listed in the ''Final Results of Reviews'' section below.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Edythe Artman, AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114 or (202) 482–3931.

SUPPLEMENTARY INFORMATION:

Background:

On July 1, 2005, the Department initiated the second sunset reviews of the antidumping duty orders on light–walled welded rectangular carbon steel tubing from Argentina and Taiwan pursuant to section 751(c) of the Act. See *Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). The Department received a notice of intent to participate from Allied Tube and Conduit, Hannibal Industries, Leavitt Tube Company, Northwest Pipe Company, Searing Industries, and Western Tube and Conduit (collectively the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i) pertaining to sunset reviews. The domestic interested parties claimed interested–party status under section 771(9)(C) of the Act as manufacturers of a domestic like product in the United States. We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted expedited (120-day) sunset reviews of these orders.

Scope of the Orders:

The product covered by these orders is light–walled welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch. This merchandise is classified under item number 7306.60.50.00 of the Harmonized Tariff Schedule of the United States. It was formerly classified under item number 610.4928 of the Tariff Schedules of the United States.

Analysis of Comments Received:

All issues raised in these reviews are addressed in the Issues and Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

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

Final Results of Reviews:

We determine that revocation of the antidumping duty orders on light–walled welded rectangular carbon steel tubing from Argentina and Taiwan would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Argentina.	
All Manufacturers/Producers/Exporters	56.26
Taiwan.	
Ornatube Enterprise	5.51
Vulcan Industrial Corp.	40.97
Yieh Hsing Industries, Ltd.	40.97
All Other Manufacturers/Producers/Exporters	29.15

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22152 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Paper Clips from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

A–570–826

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

SUMMARY: On July 1, 2005, the Department of Commerce (''the Department'') initiated the sunset review of the antidumping duty order on paper clips from the People's Republic of China (''China''). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). On the basis of Notices of Intent to Participate, adequate substantive responses filed on behalf of domestic interested parties, and a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq. or Maureen Flannery, AD/CVD Operations, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4340 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on paper clips from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). On July 11, 2005 and July 16, 2005, the Department received a Notice of Intent to Participate from Officemate International Corporation and ACCO Brands, Inc., the domestic interested

parties, within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested parties status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product. On July 29, 2005, and August 1, 2005, the Department received complete substantive responses from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive a response from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited review of this order.

Scope of the Order

The products covered by this order are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (e.g., copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this order may have a rectangular or ring–like shape and include, but are not limited to, clips commercially referred to as No. 1 clips, No. 3 clips, Jumbo or Giant clips, Gem clips, Frictioned clips, Perfect Gems, Marcel Gems, Universal clips, Nifty clips, Peerless clips, Ring clips, and Glide–On clips. The products subject to this order are currently classifiable under subheading 8305.90.3010 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifically excluded from the scope of this order are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Stephen J. Claeys, Deputy Assistant Secretary for AD/CVD Operations, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

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

Final Results of Review

We determine that revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
Shanghai Lansheng Corporation	57.64
Zhejiang Light Industrial Products Import & Export Corporation	46.01
Zhejiang Machinery and Equipment Import & Export Corporation	60.70
China–wide Rate	126.94

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22144 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–879

Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting the first administrative review of the antidumping duty order on polyvinyl alcohol (''PVA'') from the People's Republic of China (''PRC'') covering the period August 11, 2003, through September 30, 2004. We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer–specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2003, the Department published in the **Federal Register** the antidumping duty order on PVA from the PRC. *See Antidumping Duty Order: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 56620 (October 1, 2003). On October 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on PVA from the PRC for the period March 20, 2003, through September 30, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 69 FR 58889 (October 1, 2004). On October

29, 2004, Petitioners[1] requested an administrative review of Sinopec Sichuan Vinylon Works (''SVW''), a producer and exporter of the subject merchandise. SVW did not separately request an administrative review. On November 19, 2004, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of PVA from the PRC for the period March 20, 2003, through September 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 67701 (November 19, 2004).[2] On May 9, 2005, the Department corrected the beginning of the POR date to August 11, 2003. *See Memorandum to the File from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager*, dated May 9, 2005.

On June 23, 2005, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until August 2, 2005. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Polyvinyl Alcohol from the People's Republic of China*, 70 FR 36375 (June 23, 2005). Additionally, on July 22, 2005, the Department published a notice in the **Federal Register** further extending the time limit for the preliminary results of review until September 16, 2005. *See Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Polyvinyl Alcohol from the People's Republic of China*, 70 FR 42309 (July 22, 2005). Finally, on September 6, 2005, the Department published a notice in the **Federal Register** further extending the time limit for the preliminary results of review until October 31, 2005. *See Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Polyvinyl Alcohol from the People's Republic of China*, 70 FR 52984 (September 6, 2005).

On December 9, 2004, the Department issued its standard antidumping questionnaire[3] to SVW. SVW submitted its Section A questionnaire response on December 29, 2004, and its Sections C and D responses on January 18, 2005. The Department issued a Section A supplemental questionnaire to SVW on March 16, 2005, to which SVW responded on April 4, 2005. The Department issued a Sections C and D supplemental questionnaire to SVW on May 3, 2005, to which SVW responded on May 17, 2005. On June 15, 2005, the Department issued a second Sections A–D supplemental questionnaire to SVW, to which SVW responded on July 15, 2005. On September 13, 2005, the Department issued a third Sections A–D supplemental questionnaire to SVW, to which SVW responded on September 20, 2005. Finally, on October 6, 2005, the Department issued a fourth Section D supplemental questionnaire to SVW, to which SVW responded on October 17, 2005.

Period of Review

The POR is August 11, 2003, through September 30, 2004.

Scope of Order

The merchandise covered by this order is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

A. PVA in fiber form.

2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end–use certification.

6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non–vinyl acetic material.

9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise subject to this order is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Nonmarket Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the

[1] Celanese Chemicals, Ltd. and E.I. DuPont de Nemours and Co. (collectively ''Petitioners'').

[2] We note that the beginning date (*i.e.*, March 20, 2003) of the announced POR was not correct. The Department inadvertently published an incorrect beginning date using the date of the preliminary determination of sales at less than fair value (''LTFV'') investigation. Because the only respondent in this proceeding had a *de minimis* rate in the preliminary determination, the correct beginning date for the POR should have been the date of the final determination in the investigation. Thus, the Department corrected the beginning date of the POR to reflect the correct POR which is August 11, 2003, through September 30, 2004. *See Memorandum to the File from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager*, dated May 9, 2005.

[3] Section A: Organization, Accounting Practices, Markets and Merchandise.

Section C: Sales to the United States.

Section D: Factors of Production.

administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value on the NME producer's factors of production, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen to Wendy Frankel: Antidumping Administrative Review of Polyvinyl Alcohol from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated March 7, 2005. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. *See Memo to Wendy Frankel and Robert Bolling from Lilit Astvatsatrian: Polyvinyl Alcohol from the People's Republic of China: Selection of a Surrogate Country*, June 13, 2005.

The Department used India as the primary surrogate country and, accordingly, has calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the *Preliminary Results of Review of the Order on Polyvinyl Alcohol from the People's Republic of China: Factor Valuation Memorandum from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, Office VIII to the File*, dated October 31, 2005 (''*Factor Valuation Memorandum*''). We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of these preliminary results.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to government control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* government control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996). SVW provided company–specific separate rates information and stated that it met the standards for the assignment of a separate rate. In determining whether companies should receive separate rates, the Department focuses its attention on the exporter, in this case SVW, rather than the manufacturer, as our concern is the manipulation of dumping margins. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995). Consequently, the Department analyzed whether the exporter of the subject merchandise, SVW, should receive a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic, border–type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995).

To establish whether a firm is sufficiently independent from government–control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified by, Notice of *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates test, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both de jure and de facto government control over export activities. *See Silicon Carbide* and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*'').

A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual exporter may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

SVW has placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, SVW reported that, other than paying taxes, it has no relationship with any level of the PRC government. *See* page A–2 of SVW's December 29, 2004, Section A questionnaire response (''AQR''). SVW stated that it legally became an independent entity responsible for its own profits and losses. *See* page A–6 of the AQR. SVW submitted a copy of the Foreign Trade Law of the PRC to demonstrate that there is no centralized control over its export activities. *See* Attachment A–1 of the AQR. SVW also confirmed that the subject merchandise is not subject to export quotas or export control licenses. *See* page A–4 of the AQR. Furthermore, SVW stated that the Chongqing City Economic and Trade Commission has no involvement in SVW's daily activities and price negotiations with its customers. *See* page SA–5 of SVW's April 4, 2005, supplemental Section A response (''SAQR''). SVW reported that it is required to obtain a business license,

which is issued by the Chongqing Municipal Industry and Commerce Administration. *See* page A–3 of the AQR. We examined the laws and SVW's business license which it provided in its questionnaire responses, and determined that these documents demonstrate an authority for establishing the absence of de jure control over the export activities and provide evidence demonstrating the absence of government control associated with SVW's business license.

B. Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether a particular exporter is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the exporter has authority to negotiate and sign contracts, and other agreements; (3) whether the exporter has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the exporter retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

SVW states it is owned by ''all the people'' and has provided separate rates information in its AQR, SAQR, and in its July 25, 2005, supplemental response. SVW has stated that there is no element of government control and has requested a separate, company–specific rate.

As stated in *Furfuryl Alcohol*, ownership of the company by ''all the people'' does not require the application of a single rate. Accordingly, SVW is eligible for consideration of a separate rate.

In support of demonstrating an absence of *de facto* control, SVW has asserted the following: (1) SVW established its own export prices; (2) SVW negotiated contracts without guidance from any government entities or organizations; (3) SVW made its own personnel decisions; and (4) SVW retained the proceeds of its export sales and independently used profits according to its business needs. *See* pages A–4 through A–7 of the AQR. Additionally, SVW's questionnaire responses indicate that it does not coordinate with other exporters in setting prices. *See* page A–5 of the AQR. This information supports a preliminary finding that there is an absence of *de facto* government control of the export functions of SVW. Consequently, we preliminarily determine that SVW has met the criteria for the application of a separate rate.

The evidence placed on the record of this administrative review by SVW demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company–specific rate to SVW, the exporter which shipped the subject merchandise to the United States during the POR.

Partial Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination. As discussed in detail below, we have preliminarily determined that the use of partial facts available is warranted for production labor hours not reported by SVW.

SVW failed to provide information regarding its classification of selling, general, and administrative labor (''SG&A''). In its October 6, 2005, fourth supplemental questionnaire, the Department requested that SVW describe the types of labor included in its general and administrative labor hours and discuss the rationale behind this classification. In response, SVW explained that the workers in this category do not directly participate in the production process and therefore, are considered to be general and administrative labor. *See* page 5 of SVW October 17, 2005, fourth supplemental Section D response (''FSDQR''). Further, SVW provided a worksheet indicating the number of workers and hours under different SG&A categories. *See* Attachment S4–7 of id. However, SVW did not explain why some of the categories are considered SG&A when they appear to be oriented toward production labor, in particular ''Production management'' and ''Engineering management.'' Since SVW withheld the descriptions that the Department requested, the Department determines that the workers and labor hours under the headings of ''Production management'' and ''Engineering management'' represent production workers and labor hours. Therefore, after determining the percentage of subject merchandise, we have allocated the same portion of ''Production management'' and ''Engineering management'' to direct labor of PVA production. *See* Exhibit 5 of *Sinopec Sichuan Vinylon Works Program Analysis for the Preliminary Results of Review*, October 31, 2005 (''*SVW Analysis Memorandum*'').

Normal Value Comparisons

To determine whether sales of PVA to the United States by SVW were made at less than normal value (''NV''), we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for all of SVW's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated for those transactions.

We calculated EP for SVW based on delivered prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sale price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation and domestic brokerage and handling charges. *See SVW Analysis Memorandum*.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors–of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the

calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department will base NV on factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production reported by respondents for materials, energy, labor, by–products, and packing.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise, based on the best available information regarding the values of such factors in a market economy country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003). In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by SVW for the POR. As the basis for NV, SVW reported factors of production information for each separate stage of production, including the factors used in the production of all self–produced material and energy inputs, and by–products. We have valued the factors reported for each self–produced input for purposes of the preliminary results.

If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in–house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. See the final results valuation memorandum for *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001). This policy has been applied to both agricultural and industrial products. *See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) and *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China* 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003) (''*Polyvinyl Alcohol*'').

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in a recent case, we addressed whether we should value the respondent's factors used in extracting iron ore an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002); *Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*; 66 FR 49632 (September 28, 2001); *Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China*; 62 FR 61964 (November 20, 1997); and *Furfuryl Alcohol*, 60 FR 22544.

We have examined the information on the record of this review related to the purity level of PVA and issued several supplemental questionnaires to SVW on this issue. We find that despite its responses to these supplemental questionnaires, SVW has not demonstrated clearly that it accounted for the actual purity level of PVA in its calculation of the vinyl acetate monomer (''VAM'') usage factors. *See* page 4 of SVW's September 20, 2005 third supplemental questionnaire response; and pages 2–3 and Attachments 3 and 4 of FSDQR. The burden is on the respondent in an antidumping proceeding to create a complete and accurate record upon which the Department can make its determination. Therefore, consistent with our determination in the investigation, we have preliminarily determined to adjust the reported VAM factor for each type of PVA to reflect the actual PVA purity level. Accordingly, we have adjusted the reported VAM utilization factor for each type of PVA by the ratio of the actual purity level for each type of PVA to the standard purity level reported by SVW. *See SVW Analysis Memorandum, and Polyvinyl Alcohol*, 68 FR 47538 and its accompanying *Issues and Decision Memorandum*, at Comment 4.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value factors of production, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products v. United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market–economy purchase prices and use surrogate values to determine the NV. *See Notice of Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002).

SVW reported that all of its inputs were sourced from non–market economies and paid for in a non–market-economy currency. *See Factor Valuation Memorandum* for a listing of

these inputs. Therefore, we did not use respondents' actual prices for any NME purchases, and also did not use import statistics from Indonesia, Thailand or Korea in valuing any factors of production, *i.e.*, for material inputs, packing materials, and by–product credits. It is the Department's consistent practice that, where the facts developed in U.S. or third–country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry specific export subsidies), it is reasonable for the Department to consider that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and accompanying *Issues and Decision Memorandum* at Comment 1; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001) and accompanying *Issues and Decision Memorandum at Comment 1; China National Machinery Imp & Exp. Corp. V. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003).

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the respondent for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see *Factor Valuation Memorandum*.

We valued D–tartaric acid, sodium hexametaphosphate, sodium nitrite, sulfuric acid, sodium carbonate, caustic soda, liquid caustic soda, hydroquinone, N–butyl acetate, hydrochloric acid, zinc sulfate, acrylic acid–acrylic ester, methyl acetate, and zinc oxide using Indian domestic market prices reported in *Chemical Weekly*, contemporaneous with the POR. We valued azodisisobutyronitrile, bacteria killer, de–sulfur agent, solid activated carbon, quinone, liquid chlorine, steam coal, solid sodium hydroxide, poly ferro–sulfate, and acetic acid using India import statistics as published by the *World Trade Atlas*, contemporaneous with the POR.

We valued natural gas using a price obtained from the website of the Gas Authority of India Ltd., a supplier of natural gas in India, contemporaneous with the POR. For further discussion, see *Factor Valuation Memorandum*.

To value paper bags and polyethylene plastic bags (*i.e.*, the packing materials reported by the respondent), we used import values from the *World Trade Atlas*, contemporaneous with the POR.

Regarding N–methyl–2pydrolidone, alkynes gas, and anti–erosion agent, reported by SVW, we did not value these factors because: 1) surrogate value information was not available; and 2) the materials were reported as being used in minimal amounts. In previous cases, where certain materials were reportedly consumed in very small amounts and the surrogate values for these materials were not available, the Department did not include surrogate values for these materials in its calculation of normal value. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 13680 (March 20, 2003); *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000), and its accompanying *Issues and Decision Memorandum* at Comment 8; *Ferrovanadium and Nitrided Vanadium from the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FE 65656 (December 15, 1997), and its accompanying *Issues and Decision Memorandum at Comment 11; and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55273 (October 25, 1991). For the same reasons we did not value industrial grade salt, and chlorine dioxide used in treated water in our calculation of NV. In addition, for the same reasons we did not value freon. Although Petitioners provided a surrogate value for freon, the value provided reflected a price between affiliated parties. *See* Attachment D of Petitioners' April 21, 2005, submission of surrogate values. In selecting surrogate values, the Department prefers, among other things, publicly available prices that are representative of a range of prices, and the proposed surrogate value does not meet this criteria.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2004, http://ia.ita.doc.gov/wages/corrected02wages/02wages–corrected.html. The source of these wage rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2002, ILO, (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.

To determine factory overhead, depreciation, SG&A expenses, interest expenses, and profit for the finished product, we relied on rates derived from the financial statements of Jubilant Organosys Ltd., an Indian producer of comparable merchandise. We applied these ratios to SVW's costs (determined as noted above) for materials, labor, and energy. For further discussion, see the *Factor Valuation Memorandum*.

Finally, SVW reported that it generated certain by–products as a result of the production of PVA or the inputs used to produce PVA.[4] Because SVW did not provide sufficient information to permit the accurate valuation of these by–products and we were unable to obtain appropriate surrogate value data for them, we did not value these by–products for these preliminary results.

Weighted–Average Dumping Margin

The weighted–average dumping margin is as follows:

[4] These by-products included alkynes gas and recovered low pressure nitrogen.

POLYVINYL ALCOHOL FROM THE PRC

Producer/Manufacturer/ Exporter	Weighted–Average Margin (Percent)
SVW	8.04 %

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. *See* 19 CFR 351.309(d). Further, parties submitting written comments should provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Within 15 days of the completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed in the final results of review (except where the rate for a particular company is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above that have separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 97.86 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22143 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–813

Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to timely requests by Agro Dutch Industries, Ltd. (Agro Dutch) and the petitioner,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to Agro Dutch. The period of review (POR) is February 1, 2004, through January 31, 2005.

We preliminarily determine that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311).

In response to timely requests by a manufacturer/exporter, Agro Dutch, and the petitioner, the Department published a notice of initiation of an administrative review with respect to the following companies: Agro Dutch, Alpine Biotech Ltd. (Alpine Biotech), Dinesh Agro Products, Ltd. (Dinesh Agro), Flex Foods, Ltd. (Flex Foods), Himalya International, Ltd. (Himalya), KICM (Madras) Ltd. (KICM), Mandeep Mushrooms Ltd. (Mandeep), Premier Mushroom Farms (Premier), Saptarishi Agro Industries Ltd. (Saptarishi Agro), Transchem Ltd. (Transchem), Techtran Agro Industries Limited (Techtran) and Weikfield Agro Products Ltd. (Weikfield) (70 FR 14643, March 23, 2005). The POR is February 1, 2004, through January 31, 2005.

On March 29, 2005, the Department issued antidumping duty questionnaires to the above–mentioned companies. We received responses to these questionnaires during the period May

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

through June 2005 from Agro Dutch, Flex Foods, Premier, and Himalaya.

In May 2005, the petitioner timely withdrew its request for review with respect to KICM, and in June 2005, the petitioner timely withdrew its request for review with respect to Alpine Biotech, Dinesh Agro, Flex Foods, Himalya, Mandeep, Premier, Saptarishi Agro, Transchem, Techtran and Weikfield. Accordingly, we published a *Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 40982 (July 15, 2005), with respect to these companies.

We issued supplemental questionnaires to Agro Dutch in August and October 2005, and received responses in September and October 2005.

On September 29, 2005, the petitioner submitted comments with respect to the preliminary results calculations for Agro Dutch.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms≥; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms by the respondents to the United States were made at less than normal value (NV), we compared export price (EP), as appropriate, to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EPs of individual U.S. transactions to the weighted–average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared Agro Dutch's U.S. sales to sales made in the third–country market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, container solution, and label type.

Export Price

We used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by Agro Dutch to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States.

Agro Dutch reported its U.S. sales on an FOB Indian port, CIF or ex–dock duty paid basis. We made deductions from the starting price, where appropriate, for international freight, foreign inland freight, transportation insurance, foreign and U.S. brokerage and handling, and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Agro Dutch claimed a freight expense offset for some of the freight expenses associated with its export shipments to the United States and Israel, the third–country market. Although Agro Dutch has provided information that appears to show a direct correlation between expenses incurred and the offset payments made by the Indian government in this review, we did not make this adjustment because, as we stated in the previous review (*see Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 10597, 10599 (March 4, 2005)), such an adjustment is not contemplated by the Act or the Department's regulations. Specifically, the program described by Agro Dutch, granting an international freight subsidy from the Indian Agricultural and Processed Food Products Export Development Authority for the export of certain food products, is not contingent upon importation of inputs used to produce the exported subject merchandise – the duty drawback system contemplated under section 772(c)(1)(B) of the Act. Neither is it packing (as contemplated under section 772(c)(1)(A) of the Act) nor the amount of any countervailing duty, as there is no companion countervailing duty investigation on certain preserved mushrooms from India (*see* section 772(c)(1)(C) of the Act). Accordingly, we disregarded the claimed amounts.

Agro Dutch reported that, in certain instances, it provided customers with a number of extra cardboard cartons to replace boxes that are damaged during shipment. The petitioners contend that these cartons are a free merchandise discount and that, in the absence of a reported value, the Department should deduct the reported packing cost from the gross unit price. According to our analysis, it is not clear whether the cost of these extra boxes is considered a selling expense, or whether it is already accounted for in Agro Dutch's packing material cost. However, even if we were to consider the value of the boxes as a selling expense, the per–unit expense would be well under 0.33 percent *ad valorem*, the Department's threshold under 19 CFR 351.413 for insignificant adjustments (*see* discussion and calculation in ''Agro Dutch Preliminary Results Notes and Margin Calculation,'' Memorandum to the File dated October

31, 2005). Therefore, we have disregarded any adjustment for these boxes, in accordance with section 777A(a)(2) of the Act and 19 CFR 351.413.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the home market was not viable for Agro Dutch because Agro Dutch's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales of the subject merchandise. However, we determined that the third–country market of Israel was viable, in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, pursuant to section 773(a)(1)(C) of the Act, we used third–country sales as a basis for NV for Agro Dutch.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing, *id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa* (*Plate from South Africa*) 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process from the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''), including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third–country prices[2]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, and where the difference affects price comparability, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

We obtained information from Agro Dutch regarding the marketing stages involved in sales to the reported comparison market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Agro Dutch sold to importers/distributors through one channel of distribution in both the U.S. and Israeli markets. As described in its questionnaire response, Agro Dutch performs limited selling activities on behalf of its U.S. and third country sales. Furthermore, any selling activities performed (*e.g.*, sales negotiation and transportation arrangement) do not vary by channel of distribution, type of customer, or market. Therefore, Agro Dutch's sales channels are at the same LOT. Accordingly, all sales comparisons are at the same LOT for Agro Dutch and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

Cost of Production Analysis

In the most recently completed administrative review as of March 29, 2005, when the questionnaire was issued (*i.e.*, the 2002–2003 review), we found that Agro Dutch had made sales below the cost of production. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 69 FR 51630 (August 20, 2004). Subsequently, the Department also disregarded certain sales made by Agro Dutch in the 2003–2004 administrative review that were determined to be below the cost of production (*see Notice of Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 70 FR 37757, June 30, 2005). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Agro Dutch made sales in the third country at prices below the cost of producing the merchandise in the current review period. Accordingly, we instructed Agro Dutch to respond to the section D (Cost of Production) questionnaire.

A. Calculation of Cost of Production

We calculated the cost of production (COP) on a product–specific basis, based on the sum of Agro Dutch's respective costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expense, and all expenses incidental to placing the foreign like product in a condition packed and ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on the COP information submitted by Agro Dutch, except for the adjustments discussed below.

1. We revised the material costs for fresh mushrooms to account for our revaluation of work–in-process (WIP) inventory change. Agro Dutch's reported fresh mushroom costs incorporated a WIP adjustment that included costs for items other than fresh mushrooms. Based on information in the responses, we revised the fresh mushroom growing cost to limit the WIP adjustment to fresh mushroom–related WIP changes. *See* ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results,'' Memorandum to Neal Halper from Trinette Ruffin and Sheikh M. Hannan dated October 31, 2005 (*Preliminary Results COP Calculation Memo*).

2. Agro Dutch calculated the general and administrative (G&A) and interest expense ratios using the cost of manufacture as the denominator. The Department's practice, however, is to rely on the cost of goods sold (COGS) as the denominator in calculating these ratios. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 12. We recalculated the G&A and interest expense ratios using COGS data derived from information in Agro Dutch's responses. We also recalculated the net

[2] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible.

interest expense ratio to include the foreign exchange loss on remittance and prepayment penalty on loans. *See Preliminary Results COP Calculation Memo*.

On a product–specific basis, we compared Agro Dutch's weighted–average COP to the prices of third country market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of interest revenue, where appropriate) were exclusive of any applicable billing adjustments, movement charges, discounts, direct and indirect selling expenses and packing. In determining whether to disregard third country sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) within an extended period of time in substantial quantities; and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

B. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below–cost sales because we determined that they represented ''substantial quantities'' within an extended period of time, and were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

The results of our cost test for Agro Dutch indicated that, for certain products, more than 20 percent of home market or third country sales within an extended period of time were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. *See* section 773(b)(2) of the Act. Therefore, in accordance with section 773(b)(1) of the Act, we excluded these below–cost sales from our analysis and used the remaining sales as the basis for determining NV.

Price–to-Price Comparisons

We based NV on the price at which the foreign like product is first sold for consumption in the third country market, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as EP, where possible, as defined by section 773(a)(1)(B)(ii) of the Act.

Third country prices were based on FOB Indian port prices. We reduced the starting price for billing adjustments and movement expenses, and increased the starting price for interest revenue, where appropriate, in accordance with section 773(a)(6)(B) of the Act and 19 CFR 351.401(c) and (e).

We disregarded Agro Dutch's claimed freight expense offset for certain third country sales granted under the Indian government program discussed in the ''Export Price'' section above, because this type of adjustment to NV is not contemplated by section 773(a)(6) of the Act or the Department's regulations.

We also reduced the starting price for packing costs incurred in the comparison market, in accordance with section 773(a)(6)(B)(i) of the Act, and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A) of the Act. We made circumstance–of-sale adjustments for credit expenses and bank fees, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Calculation of Constructed Value

We calculated CV in accordance with section 773(e) of the Act, which states that CV shall be based on the sum of the respondent's cost of materials and fabrication for the subject merchandise, plus amounts for SG&A expenses, profit and U.S. packing costs. We relied on the submitted CV information except for the adjustments described above under ''Calculation of Cost of Production.''

Price–to-Constructed Value Comparisons

We based NV on CV for comparison to certain U.S. sales, in accordance with section 773(a)(4) of the Act. For comparisons to Agro Dutch's EP sales, we made circumstance–of-sale adjustments by deducting from CV the weighted–average direct selling expenses of Agro Dutch's above–cost third country sales, and adding to CV the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

Currency Conversion

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

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted–average dumping margin for the period February 1, 2004, through January 31, 2005, is as follows:

Manufacturer/Exporter	Percent Margin
Agro Dutch Foods, Ltd	1.59

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement

instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review.

With respect to Agro Dutch, we intend to calculate importer–specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the ''All Others'' rate made effective by the LTFV investigation (*see Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India*, 64 FR 8311 (February 19, 1999)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22142 Filed 11–4–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–580–813

Stainless Steel Butt–Weld Pipe Fittings from Korea: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request by Sungkwang Bend Company Ltd. (SKBC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order of stainless steel butt–weld pipe fittings from Korea. The review covers one firm, SKBC. The period of review (POR) is February 1, 2004, through January 31, 2005.

We preliminarily determine that sales of stainless steel butt–weld pipe fittings from Korea have not been made below normal value (NV) for SKBC. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs and Border Protection (CBP) to not assess antidumping duties based on the difference between constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to also submit: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1993, the Department published the antidumping duty order on stainless steel butt weld pipe fittings from Korea. *See Antidumping Duty Order: Certain Stainless Steel Butt Weld Pipe Fittings from Korea*, 58 FR 11029 (February 23, 1993). On February 28, 2005, SKBC requested an administrative review of the antidumping duty order on stainless steel butt- weld pipe fittings from Korea in response to the Department's notice of opportunity to request a review published in the **Federal Register**. The Department initiated the review for SKBC on March 23, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

On March 31, 2005, the Department issued sections A, B, and C of the antidumping questionnaire to SKBC. SKBC filed its response to section A of our questionnaire on May 9, 2005. On May 27, 2005, SKBC filed its response to sections B and C of our questionnaire. The Department issued a supplemental questionnaire to SKBC on July 25, 2005. SKBC filed its response to this questionnaire on August 16, 2005.

Scope of the Order

The products covered by this order are certain welded stainless steel butt–weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished fittings are

beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Product Comparison

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), we considered all stainless steel butt–weld pipe fittings covered by the ''Scope of the Antidumping Duty Order'' section of this notice, *supra*, which were produced and sold by SKBC in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of stainless steel butt–weld pipe fittings.

We relied on five characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: type, grade, seam, size, and schedule. Where there were no sales of identical merchandise in the home market to compare to the U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics and reporting instructions listed in the antidumping questionnaire. We performed a difference in merchandise (DIFMER) test to ensure that all comparison matches had no more than a twenty percent difference in variable cost of manufacture to the merchandise sold in the United States. *See* 19 CFR § 351.411(b) and Import Administration Policy Bulletin, No., 92.2 (July 29, 1992).

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as export price (EP) or the CEP. The NV LOT is that of the starting–price sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

SKBC reported one LOT in the home market, and contended that home market sales to distributors and end–users were made at the same LOT. (*See* SKC May 9, 2005, response, at appendix A–3.) In its May 9, 2005, response, SKBC indicated that it performed similar levels of sales support (*i.e.*, customer correspondence, order review and approval, customer assistance, technical advice, and freight and delivery arrangement) on its home–market sales to distributors and to end–users. We analyzed the information submitted by SKBC and determined that one LOT exists for SKBC's sales in the home market. We also examined the CEP LOT (*i.e.*, the constructed sale from SKBC to its U.S. affiliate, Sungkwang Bend America (SKBA)) and found that SKBC's U.S. sales were made at the same LOT.

Moreover, the HM LOT is more advanced in the chain of distribution than the CEP LOT. In its May 9, 2005, response, SKBC indicated that SKBA performed many of the same selling functions on SKBC's CEP sales that SKBC performed on its home market sales. We compared the CEP LOT (after deductions made pursuant to section 772(d) of the Act) to the home market LOT. We determined that there were fewer services such as customer correspondence, order review and approval, post sales service/warranties, technical advice, advertising, freight delivery arrangement, credit services and import document clearance, performed by SKBC on its CEP LOT than on SKBC's home market LOT. *See id*. In addition, the differences in selling functions performed for home market and CEP LOTs indicate that the home market LOT involved a more advanced stage of distribution than the CEP LOT. *See id*. In the home market LOT, SKBC provided marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by service centers in the U.S. market (e.g., technical advice, credit and collection, *etc.*). *See id*.

Based on our analysis of the record evidence on selling functions performed for the CEP LOT and the home market LOT, we determined the CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs within the meaning of 19 CFR § 351.412. Therefore, when we compared CEP sales to home market sales, we examined whether an LOT adjustment may be appropriate. In this case, SKBC sold at one LOT in the home market; thus, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Thus, while SKBC cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in level of trade affected price comparability. Further, we do not have the information which would allow us to examine pricing patterns of SKBC's sales of other similar products, and there are no other respondents or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making an LOT adjustment and the LOT of home market sales is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKBC. We based the amount of the CEP offset on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Comparisons

To determine whether sales of subject merchandise made by SKBC were made at less than fair value, we compared the CEP to the NV as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEP of individual U.S. transactions to the monthly weight–averaged NV of the foreign like product.

Export Price and Constructed Export Price

Section 772(b) of the Act defines CEP as ''the price at which the subject

merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter . . .'' as adjusted under subsections (c) and (d). For purposes of this administrative review, SKBC classified all of its U.S. sales as CEP transactions. Based on the record evidence, we preliminarily determine that SKBC's U.S. sales through its U.S. affiliate, SKBA, were made ''in the United States'' within the meaning of section 772(b) of the Act, and thus have been appropriately classified by SKBC as CEP transactions.

We based CEP on packed prices to unaffiliated purchasers in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, international freight, marine insurance, brokerage charges, U.S. inland freight and U.S. customs duties. As further directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including billing adjustments and direct selling expenses (*i.e.*, credit expenses, technical service expenses, and bank charges), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared SKBC's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because SKBC's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the normal course of trade.

We made adjustments, where applicable, for movement expenses (consisting of inland freight) in accordance with section 773(a)(6)(B) of the Act. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR § 351.410, we made circumstance of sale adjustments for imputed credit, warranty, bank charges, and technical service expenses. In addition, we made adjustments for differences in cost attributable to differences in the physical characteristics of the merchandise (*i.e.*, DIFMER adjustments) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR § 351.410. We also made an adjustment, in accordance with 19 CFR § 351.410(e), for indirect selling expenses incurred in the home market where commissions were granted on sales in the United States. As noted in the ''Level of Trade'' section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) of the Act.

Currency Conversion

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

Preliminary Results of Review

As a result of our review, we preliminarily find the weighted–average dumping margin for the period February 1, 2004, through January 31, 2005, to be as follows:

Manufacturer / Exporter	Weighted Average Margin (percentage)
Sungkwang Bend Company Ltd. (SKBC)	0.17

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR § 351.224(b). An interested party may request a hearing within 30 days of publication. *See* 19 CFR § 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR § 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR § 351.309(d)(2). Parties who submit arguments in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. Further, parties submitting case briefs, rebuttal briefs, and written comments are requested to provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments, or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR § 351.106(c)(2), for each respondent we calculate importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)- specific ad valorem rate is greater than *de minimis* and we do not have entered values, we calculate a per–unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to the importer (or customer).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Furthermore, the following

deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of stainless steel butt–weld pipe fittings from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

1) The cash deposit rate for the reviewed company will be the rate established in the final results of review except if a rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1) in which case the cash deposit rate will be zero;

2) For any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company–specific rate published in the most recent period;

3) If the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate from the LTFV investigation (21.2 percent). *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Welded Stainless Steel Butt–Weld Pipe Fittings From Korea*, 58 FR 11029 (February 23, 1993).

Notice to Importers

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22139 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–819, A–427–811, A–533–808)

Stainless Steel Wire Rods from Brazil, France, and India; Notice of Final Results of Five-year (Sunset) Reviews of Antidumping Duty Orders

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

SUMMARY: On July 1, 2005, the Department of Commerce (the Department) initiated the second sunset reviews of the antidumping duty orders on stainless steel wire rods from Brazil, France and India, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and inadequate response from respondent interested parties, the Department has conducted expedited sunset reviews of these antidumping duty orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Reviews'' section of this notice.

EFFECTIVE DATE: November 7, 2005.

FOR INFORMATION CONTACT: Jacqueline Arrowsmith or Dana Mermelstein, Antidumping/Countervailing Duty Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5255 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1993, the Department published the *Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 FR 63335 (December 1, 1993). On January 28, 1994, the Department published the *Antidumping Duty Order: Certain Stainless Steel Wire Rods from Brazil*, 59 FR 4021 and the *Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France*, 59 FR 4022. On August 2, 2000, the Department published the *Continuation of Antidumping Duty Orders: Stainless Steel Wire Rod from Brazil, France, and India*, 65 FR 47403.

On July 1, 2005, the Department initiated the second sunset reviews of the antidumping duty orders on stainless steel wire rods from Brazil, France and India, pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). The Department received a notice of intent to participate from Carpenter Technology Corporation, Charter Specialty Steel, and Universal & Alloy Products, Inc. (collectively, the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the domestic like product.

We received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of these orders.

Scope of the Orders

Imports covered by these orders are certain stainless steel wire rods (SSWR) from Brazil, France and India. SSWR are products which are hot–rolled or hot–rolled annealed and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight 1.2 percent or less of carbon and 10.5 percent of chromium, with or without other elements. These products are only manufactured by hot–rolling and normally sold in coiled form, and are solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The merchandise subject to these orders is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS).[1] The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision

[1] The merchandise subject to the scope of these orders was originally classifiable under all of the following HTS subheadings: 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080. HTSUS subheadings 7221.00.0020, 7221.00.0040, 7221.00.0060, 7221.00.0080 are no longer contained in the HTSUS.

Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Stainless Steel Wire Rods from Brazil, France, and India; Final Results, from Stephen J. Claeys, Deputy Assistant Secretary for AD/CVD Operations to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005 (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Commerce Building.

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

Final Results of Reviews

We determine that revocation of the antidumping duty order on stainless steel wire rods from Brazil would likely lead to continuation or recurrence of dumping at the following weighted–average percentage margins.

Manufacturers/Exporters/Producers	Weighted–Average Margins
Acos Finos Piratini SA ..	26.50 percent
Acos Villares SA	26.50 percent
Electrometal - Metals Especiais S.A.	24.63 percent
All Others	25.88 percent

We determine that revocation of the antidumping duty order on stainless steel wire rods from France would likely lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margins
Imphy	24.51 percent
Ugine–Savoie	24.51 percent
All Others	24.51 percent

We determine that revocation of the antidumping duty order on stainless steel wire rods from India would likely lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margins
Mukand Ltd.	48.80 percent
Sunstar Metals Ltd.	48.80 percent
Grand Foundry Ltd.	48.80 percent
All Others	48.80 percent

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22140 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–854)

Certain Tin Mill Products from Japan; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: On July 1, 2005, the Department of Commerce (the Department) initiated the sunset review of the antidumping duty order on certain tin mill products from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and no response from respondent interested parties, the Department conducted an expedited (120–day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, Office 6, and Dena Aliadinov, 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) 482–1391 and (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department initiated a sunset review of the antidumping duty order on tin mill products from Japan pursuant to section 751(c) of the Act. *See Initiation of Five–year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). The Department received notices of intent to participate from two domestic interested parties, United States Steel Corporation (U.S. Steel) and Mittal Steel USA ISG Inc. (Mittal Steel) (collectively, domestic interested parties), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the domestic like product. We received complete substantive responses from the domestic interested parties within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i). However, we did not receive any response from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of these orders.

Scope of the Order

The scope of this order includes tin mill flat–rolled products that are coated or plated with tin, chromium or chromium oxides. Flat–rolled steel products coated with tin are known as tin plate. Flat–rolled steel products coated with chromium or chromium oxides are known as tin–free steel or electrolytic chromium–coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single–or double–reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example,

are outside and/or specifically excluded from the scope of this order:

– Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (+/–10%) or 0.251 mm (90 pound base box) (+/–10%) or 0.255 mm (+/–10%) with 770 mm (minimum width) (+/–1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (+/–1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/square meter; with a chrome oxide coating restricted to 6 to 25 mg/m with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut–off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/square meter as type DOS, or 3.5 to 6.5 mg/square meter as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

– Single reduced electrolytically chromium– or tin–coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

– Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

– Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/square meter, with a chromium oxide layer of 5–30 mg/square meter, with a tensile strength of 260–440 N/square millimeter, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and Mu 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

– Bright finish tin–coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4 pound (0.000045 inch) and 1 pound (0.00006 inch).

– Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/square meter and chromium oxide of 10 mg/square meter, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of +/–1/8 inch, with a thickness tolerance of +/–0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: 1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or 2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or 3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or 4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or 5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or 6) CADR8 temper, 1.00/0.25 pound/

base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

– Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of 1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or 2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or 3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

– Tin–free steel coated with a metallic chromium layer between 100–200 mg/square meter and a chromium oxide layer between 5–30 mg/square meter; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (''Br'') of 10 kg minimum and a coercive force (''Hc'') of 3.8 Oe minimum.

– Tin–free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol A Di–glycidyl Ether), 1 mg/kg BFDGE (BisPhenol F Di–glycidyl Ether), and 3 mg/kg BPA (BisPhenol A).

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non–alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005, (''Decision Memorandum''), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department building.

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

Final Results of Review

We determine that revocation of the antidumping duty order on tin mill products from Japan would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Nippon Steel Corporation	95.29
Kawasaki Steel Corporation	95.29
NKK Corporation	95.29
Toyo Kohan Co., Ltd.	95.29
All Other Japanese Manufacturers and Exporters	32.52

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22141 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–041. Applicant: Georgia Institute of Technology, 711 Marietta St., Atlanta, GA 30332. Instrument: Dual Beam SEM/FIB Electron Microscope System, Model Quanta 200 3D Nanolab. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to improve understanding of molecular mechanisms and functional assemblies, initiate development of new materials, and facilitate advances in environmental analysis and detection. New research and creative concepts will include: (1) multifunctional scanning nanoprobes and quantum cascade laser–based sensing systems,(2) stimulated surface chemistry using metal–insulator-metal (MIM) devices containing nano–scale field emission arrays,(3) optically gated single molecule transistors,(4) shape–preserving chemical conversion of 3–D bioclastic structures,(5) impedance mapping AFM cantilever arrays and (6) nanobelts as nanobiosensors and nanocantilevers. Application accepted by Commissioner of Customs: September 15, 2005.

Docket Number: 05–042. Applicant: Georgia Institute of Technology, 711 Marietta St., Atlanta, GA 30332. Instrument: Dual Beam SEM/FIB Electron Microscope System, Model Nova 200 Nanolab. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to improve understanding of molecular mechanisms and functional assemblies, initiate development of new materials, and facilitate advances in environmental analysis and detection. New research and creative concepts will include: (1) multifunctional scanning nanoprobes and quantum cascade laser–based sensing systems,(2) stimulated surface chemistry using metal–insulator-metal (MIM) devices containing nano–scale field emission arrays,(3) optically gated single molecule transistors,(4) shape–preserving chemical conversion of 3–D bioclastic structures,(5) impedance mapping AFM cantilever arrays and (6) nanobelts as nanobiosensors, and nanocantilevers. Application accepted by Commissioner of Customs: September 15, 2005.

Docket Number: 05–043. Applicant: Massachusetts General Hospital, 55 Fruit Street, Boston, MA 02114. Instrument: Electron Microscope, Model JEM–1011. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used by the professional laboratory staff at Massachusetts General Hospital for the advancement of scientific knowledge relating to U.S. government funded medical research projects using electron microscopy, electron microtomy and ultracryomicrotomy techniques. Application accepted by Commissioner of Customs: September 12, 2005.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 05–22151 Filed 11–4–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, San Diego, et al., Notice of Consolidated Decision on Applications for Duty–Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 05–038. Applicant: University of California, San Diego. Instrument: Low–Temperature Ultra–High Vacuum Scanning Tunneling Microscope. Manufacturer: Omicron NanoTechnology, GmbH, Germany. Intended Use: See notice at 70 FR 54366, September 14, 2005. Reasons: The foreign instrument provides: (1) a scanning tunneling microscope (STM) mounted inside a 4K liquid helium reservoir (8-hour time between liquid He refills), (2) operation at an equilibrium temperature of 4 K (including both tip and sample), (3) in–situ sample manipulation and tip transfer capabilities, (4) low drift rates of 1.0 angstrom/hour (5) RMS vibration amplitudes of <0.005 angstrom in a 300 Hz bandwidth and (6) sample surface facing downwards during STM imaging for easy dosing. Advice received from: A university research laboratory for advanced microstructures and devices.

Docket Number: 05–039. Applicant: University of Wisconsin, Eau Claire. Instrument: Automatic Fusion Machine, Model Autofluxer 4. Manufacturer: Breitlander, GmbH, Germany. Intended Use: See notice at 70 FR . Reasons: The foreign instrument provides dissolution of whole rock powder by a combination fusion/acid digestion for trace element analysis by ICP mass spectrometry. No apparatus of equivalent scientific value to the foreign apparatus, for such purposes as it is intended to be used, is being manufactured in the United States. This is a compatible accessory for an existing instrument purchased for the use of the applicant. The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted for use with the existing instrument.

Docket Number: 05–040. Applicant: National Renewable Energy Laboratory, Golden, CO, 80401. Instrument: Dual Beam Focused Ion Beam Electron Microscope, Model Nova 200 NanoLab. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 70 FR 54366, September 14, 2005. Reasons: The foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring it. We know of no instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 05–22150 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–803)

Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders

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

SUMMARY: On July 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty (''AD'') orders on Heavy Forged Hand Tools (*i.e.*, Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) (''HFHTs'') from the People's Republic of China pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and lack of response from respondent interested parties, the Department conducted an expedited sunset review of the AD orders pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations. As a result of this sunset review, the Department finds that revocation of the AD orders would likely lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3020.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department initiated a sunset review of the AD

orders on HFHTs pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 70 FR 38101 (July 1, 2005). The Department received notices of intent to participate from the following domestic parties within the deadline specified in 19 CFR 351.218(d)(1)(i): Ames True Temper (''Ames'') and Council Tool Company (''Council Tool'').[1] These two parties claimed interested party status under section 771(9)(C) of the Act and 19 CFR 351.102(b), as domestic manufacturers and producers of the domestic like product. The Department received a substantive response from Ames and Council Tool (collectively ''the domestic interested parties'') within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any of the respondent interested parties to these proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of these AD orders.

Scope of the Orders

The products covered by these orders are HFHTs comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes).

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars, and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

The Department has issued seven conclusive scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the ''Max Multi–Purpose Axe,'' imported by the Forrest Tool Company, to be within the scope of the axes/adzes order; (2) on March 8, 2001, the Department found ''18–inch'' and ''24–inch'' pry bars, produced without dies, imported by Olympia Industrial, Inc. and SMC Pacific Tools, Inc., to be within the scope of the bars/wedges order; (3) on March 8, 2001, the Department found the ''Pulaski'' tool, produced without dies by TMC, to be within the scope of the axes/adzes order; (4) on March 8, 2001, the Department found the ''skinning axe,'' imported by Import Traders, Inc., to be within the scope of the axes/adzes order; (5) on December 9, 2004, the Department found the ''Scrapek MUTT,'' imported by Olympia Industrial, Inc., under HTSUS 8205.59.5510, to be within the scope of the axes/adzes order; (6) on May 23, 2005, the Department found 8 inch by 8 inch and 10 inch by 10 inch cast tampers, imported by Olympia Industrial, Inc. to be outside the scope of the orders; and (7) on October 14, 2005, the Department found the ''Mean Green Splitting Machine'' imported by Avalanche Industries to be within the scope of the bars/wedges order.[2]

In addition, on September 22, 2005, the Court of International Trade sustained the Department's finding that cast picks are outside the scope of the picks/mattocks order. *See Tianjin Machinery Import & Export Corporation v. United States and Ames True Temper*, Slip Op. 05–127, Court No. 03–00732 (September 22, 2005).

These reviews cover imports from all manufacturers and exporters of axes and adzes, bars and wedges, hammers and sledges, and picks and mattocks from the PRC.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Decision Memorandum, which is hereby adopted by this notice (*see* footnote 1). The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the AD orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Sunset Review

The Department determines that revocation of the AD orders on HFHTs would likely lead to continuation or recurrence of dumping at the rates listed below:

PRC–Wide	Margin (percent)
Axes/Adzes	15.02 percent
Picks/Mattocks	50.81 percent
Bars/Wedges	31.76 percent
Hammers/Sledges	45.42 percent

Notification regarding Administrative Protective Order

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22146 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] Ames is the successor company to Woodings-Verona Tool Works, the petitioner in the original investigation. Council Tool is a U.S. producer of heavy forged hand tools, such as axes and adzes, bars and wedges, hammers and sledges, and picks and mattocks. For letters submitted by Ames and Council Tool, *see* the ''Background'' section of the accompanying ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Orders on Heavy Forged Hand Tools (*i.e.*, Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) from the People's Republic of China: Final Results,'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005 (''Decision Memo'').

[2] *See* ''Final Scope Ruling: Antidumping Duty Order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China,'' from James C. Doyle, Office Director, Office 9, Import Administration, to Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, dated October 14, 2005.

DEPARTMENT OF COMMERCE

International Trade Administration

C–507–601

Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain in–shell roasted pistachios from the Islamic Republic of Iran (Iran) for the period January 1, 2003, through December 31, 2003. For information on the net subsidy rate for the reviewed company, please see the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section of this notice.)

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1986, the Department published in the **Federal Register** the countervailing duty order on certain in–shell roasted pistachios from Iran. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Roasted In–Shell Pistachios from Iran*, 51 FR 35679 (October 7, 1986) (*Roasted Pistachios*). On October 1, 2004, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 58889 (October 1, 2004). On October 27, 2004, we received a timely request for an administrative review from Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima), the respondent company in this proceeding. On November 19, 2004, we initiated an administrative review of the CVD order on in–shell roasted pistachios from Iran covering the period of review (POR) January 1, 2003, through December 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 67701 (November 19, 2004).

On November 30, 2004, petitioners[1] filed an entry of appearance and request for verification. On December 20, 2004, we issued our initial questionnaire to the Government of Iran (GOI) and Nima. On December 21, 2004, Cal Pure Pistachios, Inc. (Cal Pure), a domestic interested party, submitted an entry of appearance.

On January 25, 2005, and January 26, 2005, the GOI and Nima, respectively, submitted questionnaire responses. On March 3, 2005, we issued a supplemental questionnaire to Nima. On March 31, 2005, Nima submitted its response to our supplemental questionnaire.

On April 25, 2005, we extended the period for the completion of the preliminary results pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 70 FR 22299 (April 29, 2005).

On May 2, 2005, we issued a supplemental questionnaire to the GOI. On May 31, 2005, the GOI submitted its supplemental questionnaire response. On September 7, 2005, we issued a second supplemental questionnaire to Nima. On September 30, 2005, Nima submitted its supplemental questionnaire response. On September 15, 2005, we issued a second supplemental questionnaire to the GOI. On October 4, 2005, the GOI submitted its supplemental questionnaire response. On October 6, 2005, we extended the time limit for Nima to respond to the Department's second supplemental questionnaire. On October 12, 2005, Nima submitted its complete supplemental questionnaire response.

In accordance with 19 CFR 351.213(b), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers Nima and its grower, Razi Domghan Agricultural and Animal Husbandry Company (Razi), and ten programs for the POR January 1, 2003, through December 31, 2003.

Scope of Order

The product covered by this order is all roasted in–shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, as currently classifiable in the HTSUS under item number 0802.50.20.00. The written description of the scope of this proceeding is dispositive.

Use of Facts Available

During the course of this proceeding, we have repeatedly sought information pertaining to Nima and Razi's use of the subsidy programs under review, including information on any and all loans that the companies received from the GOI. *See* pages III–3, III–7 through 8, and III–10 of the Department's December 20, 2004, initial questionnaire, pages 3–4 of the Department's March 3, 2005, supplemental questionnaire to Nima, and pages 1–2 of the Department's September 7, 2005, second supplemental questionnaire to Nima. In addition, we have repeatedly requested information from the GOI regarding loans made to Nima and Razi. *See* pages II–4 through II–5 and II–7 through II–8 of the Department's December 20, 2004, initial questionnaire, pages 3 and 5–6 of the Department's May 2, 2005, supplemental questionnaire to the GOI, and page 2 of the Department's September 15, 2005, second supplemental questionnaire to the GOI.

In response to these inquiries relating to the Provision of Credit program, the GOI and Nima repeatedly stated that neither Nima nor Razi obtained any loans during or prior to the POR. *See, e.g.*, page 21 of Nima's January 26, 2005, questionnaire response and pages 10–13 of Nima's March 31, 2005, supplemental questionnaire response. However, in its October 12, 2005, response to the Department's second supplemental questionnaire, Nima revealed for the first time that on December 13, 2003, Razi obtained a short–term loan from the Bank of Agriculture (Bank Keshavarzi), a GOI–owned bank.

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, Nima and the GOI failed to provide information regarding the Provision of Credit program in a timely manner, as requested by the Department. The Department works within a limited time frame, as provided in section 751(a) of the Act. Because Nima only disclosed its loan to the Department on October 12, 2005, the Department is unable to ask clarifying questions concerning the loan in question prior to its issuance of the preliminary results. Thus, due to the

[1] Petitioners are comprised of members of the California Pistachio Commission (CPC).

untimely response of Nima and the GOI concerning the Provision of Credit program, we preliminarily determine that their answers on this matter are inadequate. Therefore, we must resort to the use of facts otherwise available.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing necessary information specifically requested by the Department in a timely fashion, despite numerous opportunities, the GOI and Nima have failed to cooperate to the best of their abilities. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the Act indicates that the Department may rely upon information derived from a variety of sources. *See* 19 CFR 351.308(c). In applying adverse facts available in the instant review, we have used information on the record of this administrative review. As discussed in the ''Analysis of Programs'' section below, as adverse facts available, we have relied upon a benchmark interest rate of 24 percent, which the GOI reported in its questionnaire responses was the highest lending rate a commercial bank in Iran would charge pistachio producers.

As discussed above, we learned of Razi's receipt of a government loan in Nima's October 12, 2005, supplemental questionnaire response. Razi's admission of receipt of the government loan at this stage of the proceeding raises the concern of whether Razi and Nima have fully reported all subsidies that they may have received during the POR under the GOI programs subject to this administrative review. Therefore, subsequent to these preliminary results we will continue to examine whether the GOI, Nima and Razi have properly identified any and all subsidies that the companies may have received during the POR. Furthermore, we will continue to examine the appropriateness of the rate we are assigning as adverse facts available in this administrative review.

Analysis of Programs

I. *Programs Preliminarily Determined to Confer Subsidies*

A. *Provision of Credit*

As noted above, although Nima and Razi repeatedly stated that they did not receive any loans from the GOI during the POR of the instant review, in Nima's October 12, 2005, second supplemental questionnaire response, Nima revealed for the first time that on December 13, 2003, Razi obtained a short–term loan from the Bank of Agriculture (Bank Keshavarzi), a GOI–owned bank.

We find that Nima failed to provide us with the information we requested in a timely manner. Therefore, as discussed above in the ''Use of Facts Available'' section of this notice, we preliminarily determine that an adverse inference is warranted.

In the original investigation, we found that, under this program, the GOI provides loans at below market interest rates to members of the agricultural sector. *See Roasted Pistachios.* Although the original determination was made on the basis of best information available (BIA), no new information or evidence of changed circumstances has been presented to cause us to revisit this determination. The Department preliminarily finds this program to be specific under section 771(5A)(D)(iii)(I) of the Act because the preferential credit was made available to a limited number of customers. Moreover, we preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. To determine the benefit conferred on Nima/Razi by this program, we compared the actual interest paid on the loan during the POR with the amount of interest that would have been paid at the applicable benchmark interest rate. As adverse facts available, we applied a benchmark interest rate of 24 percent, which the GOI reported in its questionnaire responses was the highest lending rate a commercial bank in Iran would charge pistachio producers. We then divided the benefit derived by the value of Razi's total sales. On this basis, we preliminarily calculated a net countervailable subsidy of less than 0.005 percent ad valorem for Nima/Razi.

II. *Programs Preliminarily Determined to Be Not Used*

Based on the information supplied by Nima on behalf of itself and its grower, Razi, we preliminarily determine that the programs listed below were not used during the POR.

A. *Provision of Fertilizer and Machinery*
B. *Tax Exemptions*
C. *Provision of Water and Irrigation Equipment*
D. *Technical Support*
E. *Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods*
F. *Program to Improve Quality of Exports of Dried Fruit*
G. *Iranian Export Guarantee Fund*
H. *GOI Grants and Loans to Pistachio Farmers*
I. *Crop Insurance for Pistachios*

Preliminary Results of Review

In accordance with sections 751(a)(1) and 751(a)(3)(A) of the Act and 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for Nima, the only exporter subject to this administrative review, for the POR, *i.e.*, calendar year 2003. We preliminarily determine that the total estimated net countervailable subsidy rate is 0.00 percent *ad valorem*.

As Nima is the exporter, but not the producer, of subject merchandise, the Department's final results of review will apply to subject merchandise exported by Nima and produced by Nima's supplier of pistachios, Razi. *See* 19 CFR 351.107(b). Therefore, we intend to issue the following cash deposit requirements, effective upon publication of the notice of final results of review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication: (1) for merchandise exported by Nima and produced by Razi, the cash deposit rate will be the *ad valorem* rate calculated in the final results of the instant administrative review; (2) for merchandise exported by Nima and produced by Maghsoudi Farms, the cash deposit rate will be 23.18 percent, the rate calculated for Nima and Maghsoudi Farms in the new shipper reviews (*see Certain In–Shell Pistachios (C–507–501) and Certain Roasted In–Shell Pistachios (C–507–601) from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews*, 68 FR 4997 (January 31, 2003) (*New Shipper Reviews*); (3) for merchandise exported by Nima but not produced by Razi or Maghsoudi Farms, the cash deposit rate will be the ''all others'' rate established in the original CVD investigation (*see* 51 FR 8344 (March 11, 1986)); (4) if the exporter is not a firm covered in this review, a prior review, or the original CVD investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (5) if neither the exporter nor producer is a firm covered in this review or the original investigation, the cash deposit rate for all other producers or exporters of the subject merchandise will continue to be 99.52 percent *ad valorem*. This rate is the ''all others'' rate from the final determination in the original investigation.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of this review, to liquidate without regard to countervailing duties all shipments of subject merchandise exported by Nima and produced by Razi, entered, or withdrawn from warehouse, for consumption during the POR. Should the final results of this review remain the same as these preliminary results, the Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise exported by Nima and produced by Razi, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country–wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non–reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed and cash deposits must continue to be collected at the cash deposit rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal–Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993), and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the old antidumping regulation on automatic assessment, which is identical to the current regulation, 19 CFR 351.212(c)(1)(ii)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding. *See Certain In–Shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 68 FR 41310 (July 11, 2003). These cash deposit rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are issued and published in accordance with sections 751(a)(1), 751(a)(3) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–22145 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–489–502)

Certain Welded Carbon Steel Standard Pipe from Turkey: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background Information

On April 22, 2005, the U.S. Department of Commerce (''the Department'') published a notice of initiation of the administrative review of the countervailing duty order on certain welded carbon steel standard pipe from Turkey covering the period of review January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 20862 (April 22, 2005). The preliminary results are currently due no later than December 1, 2005.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

This review involves four respondent companies[1] as well as the Government of Turkey, and over 15 programs that must be thoroughly analyzed by the Department. We have determined that it is not practicable to complete the preliminary results of this review within the 245-day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of the review by 120 days. The preliminary results are now due no later than March 31, 2006. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: November 1, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–22148 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061405D]

Marine Mammals; File No. 821–1588–04

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

ACTION: Notice; withdrawal of amendment application.

SUMMARY: Notice is hereby given that the Texas A&M University, Department of Marine Biology, P.O. Box 1675, Galveston, TX 77551 (Principal Investigator: Randall W. Davis, Ph.D.) has withdrawn its application to amendment Permit No. 821–1588–03 to conduct research Northern fur seals (*Callorhinus ursinus*).

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

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; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 28, 2005, a notice was published in the **Federal Register** (70 FR 37089) that an application had been filed by the above named organization. That application has been withdrawn by the applicant.

Dated: November 1, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–22130 Filed 11–4–05; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for December 15, 2005 has been canceled. The next meeting is scheduled for January 19, 2006 at 9 a.m. in the Commission's offices in the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. 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 E. 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, November 1, 2005.

Thomas E. Luebke,

Secretary.

[FR Doc. 05–22088 Filed 11–4–05; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 2, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 8, 2005, the period for making a determination on whether to request consultations with China regarding imports of women's and girls' cotton and man-made fiber shirts and blouses, not-knit (Category 341/641).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of women's and girls' cotton and man-made fiber shirts and blouses, not-knit (Category 341/641) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44566 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case because of consultations with the Government of China on a broader agreement on textiles.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–22245 Filed 11–3–05; 2:22 pm]

BILLING CODE 3510–DS–S

[1] The Borusan Group companies under review are: Borusan Birlesik Boru Fabrikalari A.S., which was renamed Borusan Mannesmann Boru Sanayi ve Ticaret A.S.; Mannesmann Boru Endustrisi T.A.S.; Istikbal Ticaret T.A.S.; and Borusan Mannesmann Boru Yatirim Holding A.S.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 2, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 8, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber skirts (Category 342/642).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber skirts (Category 342/642) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44567 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case because of consultations with the Government of China on a broader agreement on textiles.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–22246 Filed 11–3–05; 2:22 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 2, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 8, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber nightwear (Category 351/651).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber nightwear (Category 351/651) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**, 70 FR 44568 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case because of consultations with the Government of China on a broader agreement on textiles.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–22247 Filed 11–3–05; 2:22 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

November 2, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

SUMMARY: The Committee is extending through November 8, 2005, the period for making a determination on whether to request consultations with China regarding imports of cotton and man-made fiber swimwear (Category 359-S/659-S).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background:

On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber swimwear (Category 359-S/659-S) due to market disruption.

The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. **See Solicitation of Public Comments on Request for Textile and Apparel**

Safeguard Action on Imports from China, 70 FR 44568 (August 3, 2005).

The Committee's Procedures, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for this case expired on November 1, 2005. However, the Committee decided to extend until November 8, 2005, the period for making a determination on this case because of consultations with the Government of China on a broader agreement on textiles.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–22248 Filed 11–3–05; 2:22 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

November 2, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton terry and other pile towels (Category 363).

SUMMARY: On October 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton terry and other pile towels (Category 363). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such towels. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such towels are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by December 7, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, ''due to market disruption, threatening to impede the orderly development of trade in these products'', it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 11, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of cotton terry and other pile towels (Category 363). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such towels are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than December 7, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton terry and other pile towels are, due to market disruption, threatening to impede the orderly

development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–22249 Filed 11–3–05; 2:22 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Defense Advisory Board (DAB) for Employer Support of the Guard and Reserve (ESGR)

AGENCY: Employer Support of the Guard and Reserve, DoD.

ACTION: Notice of Open Meeting.

Dates: 0800–2000, Nov. 29, 2005, (Symposium). 0630–0800, Nov. 30, 2005, (DAB meeting). 0800–1700, Nov. 30, 2005, (Symposium).

Location: Hilton McLean Tyson's Corner, 7920 Jones Branch Drive, McLean, VA 22102.

SUMMARY: The DAB for ESGR meeting will focus on the status of DoD actions and recommendations from previous DAB meetings. In addition, the DAB members will attend the ''The New Reserves: Strategic in Peace, Operational in War'' symposium at Hilton McLean Tyson's Corner.

FOR FURTHER INFORMATION CONTACT: CPT Edward Hooks at 703–696–1386 x636 or by e-mail at *Edward.hooks@osd.mil.*

Dated: November 1, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 05–22071 Filed 11–4–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army; DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Public Law 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates: December 6, 2005 (Open meeting). December 7, 2005 (Open meeting).

Times: 8 a.m.–5 p.m. (December 6, 2005). 8 a.m.–3 p.m. (December 7, 2005).

Location: The Pope Club, 5504 Reilly Street, Ft. Bragg, North Carolina 28307–5217.

Agenda: The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on Topics related to ongoing and new Board issues, conduct subcommittee meetings. and conduct an executive working session.

FOR FURTHER INFORMATION CONTACT: Colonel Roger Gibson, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, VA 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: The entire sessions on December 6, 2005 and December 7, 2005 will be open to the public in accordance with section 552b(b) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection10(d). Open sessions of the meeting will be limited by space accommodations. Any interested person may attend, appear before or file statements with the Board at the time and in the manner permitted by the Board.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–22093 Filed 11–4–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

Effective Date: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Lucrecia Murdock, Human Resource Management Directorate, Execute Services Division, 2511 Jefferson Davis Highway, Arlington, VA 22202–3926.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Army Acquisition Executive (AAE) Corps are:

1. Mr. Edward Bair, Program Executive Officer, Intelligence, Electronic Warfare, and Sensors, AAE.
2. Dr. James T. Blake, Deputy to the Commander, PEO STRI.
3. Mr. Paul Bogosian, Deputy Program Executive for Aviation, AAE.
4. BG Samuel M. Cannon, Program Executive Officer, Missiles and Space.
5. Mr. T. Kevin Carroll, Program Executive Officer, Enterprise Information Systems, AAE.
6. Mr. James M. Crum, Deputy Director Program Management Office, Iraq Reconstruction/Director Program Management Office Washington.
7. Mr. Kevin M. Fahey, Deputy PEO, Ground Combat Systems.
8. Mr. Kevin J. Flamm, Program Manager for Chemical Demilitarization Operations OASA (Acquisition, Logistics & Technology).
9. Ms. JoAnn H. Langston, Director, Northern Region, U.S. Army Contracting Agency.
10. Mr. David W. Ludwig, Deputy Program Executive Officer, Command, Control and Communications (Tactical).
11. Mr. Levator Norsworthy Jr., Deputy General Counsel (Acquisition), Headquarters, Department of the Army, OGC.
12. Mr. William R. Smith, Deputy Program Executive Officer for Soldier, AAE.
13. Mr. Byron J. Young, Director, Information Technology E-Commerce, and Commercial Contracting Center, Army Contracting Agency.

The members of the Performance Review Board for the Defense Intelligence Senior Executive Service are:

1. MG John De Freitas, Commanding General, U.S. Army Intelligence and Security Command.
2. Mr. Thomas A. Gandy, Director, Counterintelligence, Human Intelligence.
3. Mr. Darell G. Lance, Chief of Staff, U.S. Army Intelligence and Security Command.
4. Mr. Maxie L. McFarland, Deputy Chief of Staff for Intelligence, U.S. Army Training and Doctrine Command.
5. Mr. Jerry V. Proctor, Deputy for Futures, U.S. Army Training and Doctrine Command.

6. Mr. Mark A. Smith, Deputy Director for Intelligence, United States Southern Command.

7. Mr. Robert J. Winchester, Assistant for Intelligence Liaison, Office, Chief of Legislative Liaison.

The members of the Performance Review Board for the Defense Intelligence Senior Level are:

1. Mr. Stephen R. Covington, Special Assistant to the Supreme Allied Commander, Europe for Strategic Studies of the Former Soviet Union.

2. Mr. Thomas F. Greco, Special Assistant to the G–2, Headquarters, U.S. Army Europe and 7th Army.

3. Mr. Ernie H. Furany, Senior General Military Intelligence Analyst, National Ground Intelligence Center.

4. Mr. Jerry V. Proctor, Deputy for Futures, U.S. Army Training and Doctrine Command.

5. Ms. Mary L. Schnurr, Technical Advisor for Intelligence Information Management, Office, Deputy Chief of Staff, G–2.

6. Ms. Mary B. Scott, Chief Scientist, National Ground Intelligence Center.

7. Mr. William H. Speer, Technical Advisor, Foreign Intelligence Production, Office, Deputy Chief of Staff, G–2.

The members of the Performance Review Board for the North Atlantic Treaty Organization are:

1. Mr. Barry Pavel, Principal Director for Strategy.

2. Ms. Sandra R. Riley, Administrative Assistant to Secretary of the Army, Office of the Secretary.

3. Mr. Larry Stubblefield, Deputy Administrative Assistant to the Secretary of the Army/Executive Director, U.S. Army Resources and Programs Agency.

4. Mr. James Townsend, Principal Director for European and North Atlantic Treaty Organization Policy.

5. Mr. Alfred G. Volkman, Director, International Cooperations, Office of the Under Secretary of Defense, Acquisition, Technology and Logistics.

The members of the Performance Review Board for the Office of the Secretary of the Army are:

1. Mr. John J. Argodale, Deputy Assistant Secretary of the Army (Financial Operations), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

2. Mr. William A. Armbruster, Deputy Assistant Secretary of the Army for Privatization and Partnership, Office of the Assistant Secretary of the Army (OASA) (Installations and Environment).

3. Ms. Diane J. Armstrong, Director for CF/IT Investment, Integration and Evaluation, Office of the Chief Information Officer/G–6.

4. Mr. Stephen Bagby, Deputy Assistant Secretary of the Army (Cost and Economics), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

5. Ms. Earnestine Ballard, Deputy Assistant Secretary of the Army for Procurement and Policy, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).

6. Mr. Ronald G. Bechtold, Executive Director, U.S. Army Information Technology, Office of the Administrative Assistant to the Secretary of the Army.

7. Mr. Vernon Bettencourt, Jr., Deputy Chief Information Officer, Office of the Chief Information Officer/G–6.

8. Mr. William H. Campbell, Assistant to the Deputy Assistant Secretary of the Army (Budget), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

9. Mr. Joe C. Capps, Director, Enterprise Systems Technology Activity, NETCOM/9th Army Signal Command.

10. Dr. Craig E. College Deputy Assistant Secretary of the Army (Infrastructure Analysis), Office of the Assistant Secretary of the Army (Installations and Environment).

11. Mr. James C. Cooke, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.

12. Mr. Addison D. Davis, IV, Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), Office of the Assistant Secretary of the Army (Installation and Environment).

13. Mr. Daniel B. Denning, Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs)/Deputy Assistant Secretary (Training, Readiness and Mobilization).

14. Dr. Henry C. Dubin, Assistant Deputy Under Secretary (Operations Research).

15. Mr. George S. Dunlop, Principal Deputy Assistant Secretary of the Army (Civil works)/Deputy Assistant Secretary of the Army (Legislation).

16. Mr. Terence M. Edwards, Director for Army Architecture Integration Cell, Chief Information Office/G–6.

17. Mr. Patrick J. Fitzgerald, Principal Deputy Auditor General, U.S. Army, Army Audit Agency.

18. BG Jeffrey W. Foley, Director or Architecture Operations, Networks and Space, G–6, Office of the Chief Information Officer/G–6.

19. Mr. Nelson M. Ford, Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller)/(Controls).

20. Ms. Janet L. Garber, Director, Test and Evaluation Management Agency.

21. Ms. Judith A. Guenther, Director of Investments, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

22. Mr. Joseph F. Guzowski, Principal Deputy Chief of Legislative Liaison, Office of the Secretary of the Army, Office of the Chief of Legislative Liaison.

23. Ms. Stephanie L. Hoehne, Principal Deputy Chief of Public Affairs/Director, Soldiers Media Center.

24. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.

25. Mr. Edward C. Horton, Deputy for Services and Operations/Executive Director, U.S. Army Services and Operations Agency, Office of the Administrative Assistant to the Secretary of the Army.

26. Mr. Craig D. Hunter, Deputy Assistant Secretary of the Army for Defense Exports and Cooperation, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).

27. Dr. Daphne K. Kamely, Special Assistant to the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health, Office of the Assistant Secretary of the Army (Installations and Environment).

28. Mr. Thomas E. Kelly, III, Deputy Under Secretary of the Army.

29. Dr. Thomas H. Killion, Deputy Assistant Secretary for Research and Technology/Chief Scientist, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).

30. Mr. Michael A. Kirby, Special Assistant to the Secretary of the Army for Business Transformation Initiative, Office of the Secretary of the Army, Immediate Office.

31. Mr. Douglas W. Lamont, Deputy Assistant Secretary of the Army (Planning and Rev), Office of the Secretary of the Army (Civil Works).

32. Ms. JoAnn H. Langston, Director, Northern Region, U.S. Army Contracting Agency.

33. Ms. Carol E. Lowman, Director, Southern Region, U.S. Army Contracting Agency.

34. Mr. Mark D. Manning, Special Assistant to the Secretary of the Army, Assistant Secretary of the Army (Manpower and Reserve Affairs) for Manpower and Resources.

35. Mr. John P. McLaurin, III, Deputy Assistant Secretary of the Army (Human Resources), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

36. Ms. Kathleen S. Miller, Director of Business Resources, Office of the

Assistant Secretary of the Army (Financial Management and Comptroller).

37. Mary Jo Miller, Director for Technology, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

38. Mr. Wesley C. Miller, Director of Management and Control, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

39. Mr. Joseph P. Mizzoni, Deputy Auditor General, Policy and Operations Management, U.S. Army Audit Agency.

40. Ms. Joyce E. Morrow, The Auditor General, U.S. Army Audit Agency.

41. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition), Office of the General Counsel.

42. Mr. Dale Ormond. Deputy Assistant Secretary for the Army for Elimination of Chemical Weapons, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).

43. Dr. John A. Parmentola, Director, Research and Laboratory Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).

44. Mr. Benjamin J. Piccolo, Deputy Auditor General, Forces and Financial Audits, U.S. Army Audit Agency.

45. Ms. Tracey L. Pinson, Director of Small and Disadvantaged Business Utilization, Office of the Secretary.

46. Mr. Wallace D. Plummer, Director of Operations and Support, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

47. Mr. Dean Popps, Principal Deputy to the Assistant Secretary of the Army (Acquisition, Logistics and Technology)/Director for Iraq Reconstruction and Program Management.

48. Mr. Geoffrey G. Prosch, Principal Deputy Assistant Secretary of the Army (Installations and Environment).

49. Mr. Wimpy D. Pybus, Deputy Assistant Secretary of the Army for Integrated Logistics Support, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

50. Mr. Matt Reres, Deputy General Counsel (Ethics and Fiscal), Office of the General Counsel.

51. Ms. Sandra R. Riley, Administrative Assistant to Secretary of the Army, Office of the Secretary.

52. Mr. Richard G. Sayre, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.

53. Mr. Craig R. Schmauder, Deputy General Counsel (Civil works and Environment), Office of the General Counsel.

54. Mr. Karl F. Schneider, Deputy Assistant Secretary of the Army (Army Review Boards Agency), Office of the Director.

55. Ms. Sandra O. Sieber, Director, Army Contracting Agency.

56. Mr. Robert H. Smiley, Director, Reserve Affairs Integration Office, Office of the Secretary of the Army (Manpower and Reserve Affairs).

57. Mr. Harry E. Soyster, Special Assistant to the Secretary of the Army (World War II 60th Anniversary Observance).

58. Mr. Donald W. Spigelmyer, Executive Director, Residential Communities Initiatives, Office of the Assistant Secretary of the Army (Installations & Environment).

59. MG Edgar Stanton, Deputy Assistant Secretary of the Army (Budget), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

60. Mr. Larry Stubblefield, Deputy Administrative Assistant to the Secretary of the Army/Executive Director, U.S. Army Resources and Programs Agency.

61. Mr. Ramon Suris-Fernandez, Deputy Assistant Secretary of the Army (Equal Employment Opportunity and Civil Rights).

62. Mr. Thomas W. Taylor, Senior Deputy General Counsel, Office of the General Counsel.

63. Ms. Katherine S. Thompson, Director, Programs and Strategy, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

64. Ms. Claudia L. Tornblom, Deputy Assistant Secretary of the Army (Management and Budget), Office of the Assistant Secretary of the Army (Civil Works).

65. Ms. Carla A. Von Bernewitz, Director, Business Transformation Task Force, Office of the Under Secretary.

66. MG David F. Wherley, Jr., Director, District of Columbia National Guard, Office of the Secretary.

67. Mr. Joseph W. Whitaker, Jr., Deputy Assistant Secretary of the Army (Installations & Housing), Office of the Assistant Secretary of the Army (Installations & Environment).

68. Mr. Gary L. Winkler, Director for Enterprise Management, Office of the Chief Information Officer/G–6.

69. Mr. Byron J. Young, Director, Information Technology E-Commerce, and Commercial Contracting Center, Army Contracting Agency.

The members of the Performance Review Board for U.S. Army Corps of Engineers are:

1. Ms Kristine L. Allaman, Chief, Installation Support Division, Headquarters, U.S. Army Corps of Engineers.

2. Mr. Donald L. Basham, Chief, Engineering & Construction Division, Headquarters, U.S. Army Corps of Engineers.

3. BG Bruce A. Berwick, Commander, Great Lakes & Ohio River Division.

4. Mr. Stephen Coakley, Director of Resource Management, Headquarters, U.S. Army Corps of Engineers.

5. Dr. Susan L. Duncan, Director of Human Resources, Headquarters, U.S. Army Corps of Engineers.

6. BG William T. Grisoli, Commander, North Atlantic Division.

7. Ms. Wilhelmenia C. Hinton-Lee, Regional Business Director, Great Lakes & Ohio River Division.

8. Mr. Daniel H. Hitchings, Regional Business Director, Mississippi Valley Division.

9. Dr. James R. Houston, Director, Engineer Research & Development Center (ERDC).

10. MG Ronald L. Johnson, Deputy Commanding General.

11. Mr. Gary A. Loew, Chief, Program Management Division, Headquarters, U.S. Army Corps of Engineers.

12. Mr. Thomas W. Richardson, Director, Coastal & Hydraulics Laboratory, ERDC.

13. Mr. Mohan Sigh, Regional Business Director, North Atlantic Division.

14. Mr. Robert E. Slockbower, Regional Business Director, Southwestern Division.

15. Mr. Earl H. Stockdale, Chief Counsel, Headquarters, U.S. Army Corps of Engineers.

16. Mr. Steven L. Stockton, Deputy Director for Civil Works, Headquarters, U.S. Army Corps of Engineers.

17. BG Meredth W.B. Temple, Director of Military Programs, Headquarters, U.S. Army Corps of Engineers.

18. Mr. Michael B. White, Programs Director, Great Lakes & Ohio River Division.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–22092 Filed 11–4–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory

Committee Act (Pub. L. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 1, 2007. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on a continuing basis regarding general policy matters relating to coal issues.

SUPPLEMENTARY INFORMATION:

Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has diverse members who represent interests outside the coal industry, including environmental interests, labor research, and academia. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at 202/586–3279.

Issued at Washington, DC on November 1, 2005.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 05–22118 Filed 11–4–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy: James T. Campbell.

DATES: This appointment is effective as of September 30, 2005.

Issued in Washington, DC October 24, 2005.

Claudia A. Cross,

Chief Human Capital Officer/Director, Office of Human Capital Management.

[FR Doc. 05–22119 Filed 11–4–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

DATES: These appointments are effective as of September 30, 2005.

EMPLOYEE NAME:
ABBOTT III, WALTER D
ALLEVA, JOHN A
ALLISON, JEFFREY M
ANDERSON, CHARLES E
ANDERSON, CYNTHIA V
ANDERSON, MARGOT H
ANGULO, VERONICA A
AOKI, STEVEN NMN
ARKIN, RICHARD W
ARMSTRONG, DAVID J
ARTHUR III, WILLIAM JOHN
ASCANIO, XAVIER NMN
ASHWORTH, DENNIS J
AVERY, NAPOLEON S
BACA, FRANK A
BACA, MARK C
BAILEY JR, LAWRENCE O
BAKER, KENNETH E
BARKER JR, WILLIAM L
BASHISTA, JOHN R
BAUER, CARL O
BEAMON, JOSEPH A
BEARD, SUSAN F
BEARSON, DARREN W
BEAUDRY-LOSIQUE, JACQUES N
BECKETT, THOMAS H
BENNETT, RUTH B
BESERRA, FRANK J
BIELAN, DOUGLAS J
BIENIAWSKI, ANDREW J
BLACK, RICHARD L
BLACK, STEVEN K
BLACKWOOD, EDWARD B
BLADOW, JOEL K
BOARDMAN, KAREN L
BONILLA, SARAH J
BORCHARDT, CHARLES A
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BOWMAN, GERALD C
BOYD, DAVID O
BOYD, GERALD G
BRADEN JR, ROBERT C
BRADLEY, SAMUEL M
BREZNAY, GEORGE B
BRODMAN, JOHN R
BRODY, BRUCE A
BROMBERG, KENNETH M
BRONSTEIN, ELI B
BROWN III, ROBERT J
BROWN, RICHARD D
BRUMLEY, WILLIAM J
BUBAR, PATRICE M
BURGESON, ERIC R
BURNS, ALLEN L
BURROWS, CHARLES W
BUTLER, ROGER A
CADIEUX, GENA E
CALLENDER, BRIAN W
CAMPBELL II, HUGH T
CAMPBELL, JAMES THOMAS
CARABETTA, RALPH A
CARDINALI, HENRY A
CARLSON, JOHN T
CARLSON, KATHLEEN ANN
CARNES, BRUCE M
CARY, STEVEN V
CAVANAGH, JAMES J
CERVENY, THELMA J
CHACEY, KENNETH A
CHALK, STEVEN G
CHAVEZ-WILCYNSKI, JAN M
CHUNG, DAE Y
CILIBERTI, ERIC J
CLAPPER, DANIEL R
COCHRAN, DIANE P
COLE, ALMEDA C
COLLARD, GEORGE W
CONOVER, DAVID W
CONTI, JOHN J
COOK, JOHN S
COREY, RAY J
COSTLOW, BRIAN D
CRAIG JR, JACK R
CRANDALL, DAVID H
CRAWFORD, DAVID W
CROSS, CLAUDIA A
CYGELMAN, ANDRE I
D'AGOSTINO, THOMAS PAUL
DAUB, VERNON NMN
DAUGHERTY, MAURICE W
DAVIES, NELIA A
DE ALVAREZ, ALEXIS C
DE LORENZO, RALPH H
DECKER, JAMES F
DEDIK, PATRICIA NMN
DEHMER, PATRICIA M
DEHORATIIS JR, GUIDO NMN
DEIHL, MICHAEL A
DELWICHE, GREGORY K
DEMKO, JOSEPH C
DER, VICTOR K
DESMOND, WILLIAM J
DEVER, GERTRUDE L
DIAMOND, BRUCE M
DIFIGLIO, CARMEN NMN
DOBRIANSKY, LARISA E
DOOLEY III, GEORGE J
DYER, J RUSSELL
EGGER, MARY H
EIMES, JAMES E
EKIMOFF, LANA NMN

ELWOOD, JERRY W
ERBSCHLOE, DONALD R
ERICKSON, LEIF NMN
ERRINGTON, GORDON V
FAUL, JERRY W
FAULKNER, DOUGLAS L
FIORE, JAMES J
FITZGERALD, CHERYL P
FOLEY, KATHLEEN Y
FOWLER, JENNIFER JOHNSON
FRANKLIN, CHARLES ANSON
FRANKLIN, RITA R
FREI, MARK W
FRESCO, MARY ANN E
FRYBERGER, TERESA A
FURRER, ROBIN R
FYGI, ERIC J
GASPEROW, LESLEY A
GEISER, DAVID W
GENDRON, MARK O
GERRARD, JOHN E
GIBSON JR, WILLIAM C
GILBERTSON, MARK A
GINSBERG, MARK B
GLENN, DANIEL E
GOLAN, PAUL M
GOLDMAN, PETER R
GOLDSMITH, ROBERT NMN
GOLLOMP, LAWRENCE A
GOODMAN, DOUGLAS NMN
GOODRUM, WILLIAM S
GOTTLIEB, PAUL A
GREENBERG, RAYMOND F
GREENWOOD, JOHNNIE D
GRESHAM, LARRY M
GROSE, AMY E
GRUENSPECHT, HOWARD K
GUEVARA, ARNOLD E
GUEVARA, KAREN C
GUNN JR, MARVIN E
HACSKAYLO, MICHAEL S
HARDIN, MICHAEL G
HARDWICK JR, RAYMOND J
HARRIS, ROBERT J
HARTMAN, JOHN R
HARVEY, TOBIN K
HASS, RICKEY R
HAWTHORNE, JOAN GATES
HAYWARD, MARY ALICE
HEADLEY, LARRY C
HEFFERNAN, BARBARA J
HENNEBERGER, KAREN O
HENNEBERGER, MARK W
HICKOK, STEVEN G
HIXON JR, HARRY W
HODSON, PATRICIA J
HOFFMAN, PATRICIA A
HOLLAND, MICHAEL D
HOLLOWELL, BETTY L N
HOOD, ROBERT R
HOPF, RICHARD H
HUDSON, JODY L
HUFFER, WARREN L
HUIZENGA, DAVID G
HUNEMULLER, MAUREEN A
HUTTO III, F CHASE
HYNDMAN, JOHN E
IZELL, KATHY D
JAFFE, HAROLD NMN
JENKINS, ROBERT G
JOHNSON, ROBERT SHANE
JOHNSON, SANDRA L
JOHNSTON, MARC NMN
JONAS, DAVID S
JORDAN, ROBERT R
JORDAN, ROSALIE M
JUAREZ, LIOVA D
KAEMPF, DOUGLAS E
KANE, MICHAEL C
KEANE, CHRISTOPHER J
KEARNEY, JAMES H
KELLY, KEVIN NMN
KENNEDY, JOHN P
KERSTEN, JOHN H
KESELBURG, JAMES D
KHAN, TARIQ M
KIGHT, GENE H
KILPATRICK, MICHAEL A
KIRKENDALL, NANCY J
KLEIN, KEITH A
KNIPP, ROBERT M
KNOX, ERIC K
KOLB, INGRID A C
KOLEVAR, KEVIN M
KOLTON, ANNE WOMACK
KONOPNICKI, THAD T
KOTEK, JOHN F
KOURY, JOHN F
KOUTS, CHRISTOPHER A
KOVAR, DENNIS G
KROL, JOSEPH J
KRUGER, PAUL W
KUNG, HUIJOU HARRIET
KUSNEZOV, DIMITRI F
LAMBERT, JAMES B
LANGE, ROBERT G
LANTHRUM, J GARY
LAWRENCE, ANDREW C
LAZOR, JOHN D
LEE, STEVEN NMN
LEHMAN, DANIEL R
LEMPKE, MICHAEL K
LERSTEN, CYNTHIA A
LEWIS III, CHARLES B
LEWIS JR, WILLIAM A
LEWIS, ROGER A
LIVENGOOD, JOANNA M
LOWE, OWEN W
LOYD, RICHARD NMN
LUCZAK, JOANN H
MADDOX, MARK R
MAHARAY, WILLIAM S
MALE, BARBARA D
MALINOVSKY, JOSEPH M
MALOSH, GEORGE J
MARCINOWSKI III, FRANK NMN
MARKEL JR, KENNETH E
MARLAY, ROBERT C
MARMOLEJOS, POLI A
MARTINEZ, ELOY DENNIS
MASTERSON, MARY A
MCCLOUD, FLOYD R
MCCONNELL, JAMES NMN
MCCORMICK, MATTHEW S
MCCRACKEN, STEPHEN H
MCGEE, ALEXANDER B
MCKEE, BARBARA N
MCKENZIE, JOHN M
MCMULLAN, ROBERT L
MCRAE, JAMES BENNETT
MEEKS, TIMOTHY J
MELLINGTON, SUZANNE P
MEYER, CHARLES E
MILLER, CLARENCE L
MILLER, DEBORAH C
MILLER, WENDY L
MILNER, RONALD A
MINK, LELAND L
MIOTLA, DENNIS M
MONETTE, DEBORAH D
MONTANO, PEDRO A
MOORER, RICHARD F
MORTENSEN, RICHARD W
MORTENSON, VICTOR A
MOSQUERA, JAMES P
MUELLER, TROY J
MURPHIE, WILLIAM E
NAPLES, ELMER M
NEALY, CARSON L
NEUHOFF, JON W
NEWELL, JOHN D
NOLAN, ELIZABETH A
NORMAN, PAUL E
O'FALLON, JOHN R
OLENCZ, JOSEPH NMN
OLINGER, SHIRLEY J
OLIVER, LAWRENCE R
OLIVER, STEPHEN R
OLSON, DEAN G
OOSTERMAN, CARL H
OSHEIM, ELIZABETH L
OTT, MERRIE CHRISTINE
OWEN, MICHAEL W
OWENDOFF, JAMES M
PARKES, ROSITA O
PARKS JR, WILLIAM P
PARNES, SANFORD J
PATEL, YOSEF NMN
PATRINOS, ARISTIDES A
PAVETTO, CARL S
PEASE, HARRISON G
PENRY, JUDITH M
PETERSON, BRADLEY A
PIEPER, FREDRICK G
PIPER II, LLOYD L
PODONSKY, GLENN S
POWERS, KENNETH W
PRICE JR, ROBERT S
PROVENCHER, RICHARD B
PRZYBYLEK, CHARLES S
PUMPHREY, DAVID L
RHODERICK, JAY E
RICHARDS, AUNDRA M
RICHARDSON, HERBERT NMN
ROACH, RANDY A
ROBERTS, MICHAEL NMN
ROBINSON, DAVID M
RODEHEAVER, THOMAS N
RODEKOHR, MARK E
RODGERS, STEPHEN J
RODIN, LAURA M
ROLLOW, THOMAS A
ROSEN, SIMON PETER
RUDINS, GEORGE NMN
RUSSO, FRANK B
RYDER, THOMAS S
SALM, PHILIP E

SALMON, JEFFREY T
SANCHEZ, NANCY N
SCHEPENS, ROY J
SCHMITT, WILLIAM A
SCHNAPP, ROBERT M
SCHOENBAUER, MARTIN J
SCHWARTZ, DOUGLAS H
SCHWIER, JEAN F
SCOTT, BRUCE B
SCOTT, RANDAL S
SELLERS, ELIZABETH D
SHAGES, JOHN D
SHARPLEY, CHRISTOPHER R
SHEARER, C RUSSELL H
SHEPPARD, CATHERINE M
SHERMAN, HELEN O
SILBERGLEID, STEVEN A
SILVERSTEIN, BRIAN L
SIMPSON, EDWARD R
SINGER, MARVIN I
SITZER, SCOTT B
SKUBEL, STEPHEN C
SLUTZ, JAMES A
SMITH, BARRY ALAN
SMITH, DENISE H
SMITH, KEVIN W
SMITH, THOMAS Z
SNIDER, LINDA J
SOHINKI, STEPHEN M
SOLICH, DONALD J
SPADER, WILLIAM F
STACY, GERALD L
STAFFIN, ROBIN NMN
STALLMAN, ROBERT M
STARK, RICHARD M
STEVENS, WALTER J
STONE, BARBARA R
STONE, CHERYL M
STRAKEY JR, JOSEPH P
STRAUSS, NEAL J
SULLIVAN, JOHN R
SURASH, JOHN E
SUTULA, RAYMOND A
SWAILES, JOHN H
SWIFT III, JOHN E
SWIFT, JUSTIN R
TAVARES, ANTONIO F
TAYLOR, STEVE C
TAYLOR, WILLIAM J
TEDROW, RICHARD T
TORKOS, THOMAS M
TRAUTMAN, STEPHEN J
TRIAY, INES R
TURI, JAMES A
TURNER, JAMES M
UNDERWOOD, WILLIAM R
VAGTS, KENNETH A
VALDEZ, WILLIAM J
VANN, LARRY JAY
VANZANDT, VICKIE A
VIOLA, MICHAEL V
WAGNER, M PATRICE
WAHLQUIST, EARL J
WAISLEY, SANDRA L
WALL, EDWARD JAMES
WALSH, ROBERT J
WALTER, ALFRED K
WARNICK, WALTER L
WARTHER, ROBERT F
WATT, MEGGEN M
WEEDALL, MICHAEL J
WEIS, MICHAEL J
WHITAKER JR, MARK B
WHITNEY, JAMES M
WIEKER, THOMAS L
WILBANKS, LINDA R
WILCHER, LARRY D
WILKEN, DANIEL H
WILKES, BRYAN K
WILLIAMS, ALICE C
WILLIAMS, MARK H
WILMOT, EDWIN L
WORTHINGTON, PATRICIA R
WRIGHT, STEPHEN J
WUNDERLICH, ROBERT C
YUAN-SOO HOO, CAMILLE C
ZAMORSKI, MICHAEL J
ZIEGLER, JOSEPH D
ZIESING, ROLF F

Issued in Washington, DC October 24, 2005.

Claudia A. Cross,

Chief Human Capital Officer/Director, Office of Human Capital Management.

[FR Doc. 05–22120 Filed 11–4–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–52–000]

Algonquin Gas Transmission, LLC; Notice of Filing

November 1, 2005.

Take notice that on October 26, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing its annual Fuel Reimbursement Quantity filing in accordance with section 32 of the general terms and conditions of its FERC Gas Tariff.

Algonquin states that copies of this filing were served upon all affected customers of Algonquin and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: 5 p.m. eastern time on November 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6165 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–420–000]

Bayou Casotte Energy LLC; Notice of Application

October 31, 2005.

Take notice that on September 30, 2005, Bayou Casotte Energy LLC (''Bayou Casotte Energy''), 6001 Bollinger Canyon Rd., San Ramon, CA 94583–7324, filed in Docket No. CP05–420–000, an application pursuant to section 3 of the Natural Gas Act (NGA) to authorize Bayou Casotte Energy to site, construct, and operate facilities that it intends to use to import liquefied natural gas (''LNG'') into the United States. The proposed Bayou Casotte Energy site is located in Jackson County, Mississippi. The site is located adjacent to the existing Chevron Pascagoula Refinery on Bayou Casotte, just east of Pascagoula, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to Richard A. Lammons, Vice President of Bayou Casotte Energy LLC, 1500 Louisiana Street, Houston, Texas 77002 or (877) 424–5495.

On March 2, 2005 the Commission staff granted Bayou Casotte Energy's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF05–9–000 to staff activities involving Bayou Casotte Energy. Now, as of the filing of Bayou Casotte Energy's application on September 30, 2005, the NEPA Pre-Filing Process for this project has ended. From this time forward, Bayou Casotte Energy's proceeding will be conducted in Docket No. CP05–420–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. In light of the recent Gulf Coast hurricanes and at Bayou Casotte Energy's request, the comment period is extended to 90 days to ensure full public participation.

Comment Date: January 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6168 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–17–000]

BBPOPWind Equity LLC, Blue Canyon Windpower LLC, Eurue Combine Hills 1 LLC, Caprock Wind LLC, Babcock & Brown Wind Partners Ltd., Babcock & Brown Wind Partners Trust, Babcock & Brown Wind Partners (Bermuda) Ltd., Babcock & Brown Infrastructure Management Pty. Ltd., BBWP (US) LLC; Notice of Filing

November 1, 2005.

Take notice that on October 27, 2005, BBPOP Wind Equity LLC, Blue Canyon Windpower LLC, Eurus Combine Hills 1 LLC, Caprock Wind LLC, Babcock & Brown Wind Partners Ltd., Babcock & Brown Wind Partners trust, Babcock & Brown Wind Partners (Bermuda) Ltd., BBWP (US) LLC, and Babcock & Brown Infrastructure Management Pty. Ltd. (collectively, Applicants), pursuant to section 203 of the Federal Power Act, hereby request authorization for the reorganization and sale of upstream ownership interest in jurisdictional facilities owned by Blue Canyon, Combine Hills, and Caprock.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 17, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6155 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG06–4–000]

Big Horn Wind Project, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

November 1, 2005.

Take notice that on October 27, 2005, Big Horn Wind Project, LLC (Big Horn) pursuant to part 365 of the Commission's regulations, filed an application for determination of exempt wholesale generator status.

Big Horn states that it is an Oregon limited liability company, will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling electric energy at wholesale.

Big Horn further states that it has served a copy of the filing on the Securities and Exchange Commission, the California Public Utilities Commission, the Oregon Public Utilities Commission, the Washington Utilities and Transportation Commission, the Utah Public Service Commission, the Idaho Public Utilities Commission, and the Wyoming Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 17, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6157 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–54–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

November 1, 2005.

Take notice that on October 28, 2005, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2005:

Fourteenth Revised Sheet No. 6
Seventh Revised Sheet No. 6A

Canyon states that the purpose of this filing is to make a periodic adjustment in Canyon's rates under its cost-of-service tracking mechanism. Canyon further states that this filing represents Canyon's sixth tracking filing under section 37 of the general terms and conditions of its tariff.

Canyon states that copies of the filing are being mailed to its customers and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6166 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–9–000]

Florida Gas Transmission Company; Notice of Application

November 1, 2005.

Take notice that on October 20, 2005, Florida Gas Transmission Company (FGT), 5444 Westheimer, Houston, Texas 77056, filed in Docket No. CP06–9–000, an application pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting: (i) Approval to abandon certain mainline pipeline; and (ii) a certificate of public convenience and necessity to construct, and operate mainline pipeline, valves, and ancillary facilities to replace the abandoned facilities. The project is designed to relocate a portion of FGT's pipeline system due to a widening project involving 11.3 miles of State Road 91 in Broward County, Florida to be undertaken by the Florida Department of Transportation/Florida Turnpike Enterprise (FDOT/FTE), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the

''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Specifically, FGT proposes to replace its existing 18-inch and 24-inch diameter pipeline with a single 36-inch diameter pipeline. The existing 18-inch and 24-inch diameter pipeline will be abandoned in place, with the exception of pipe segments that can be safely removed without harm to existing roads and roadway structures. The proposed project has an estimated cost of $110.2 million.

Any questions regarding this application should be directed to Stephen T. Veatch, Sr., Director, Certificates and Tariffs (713) 989–2024, Florida Gas Transmission Company (FGT), 5444 Westheimer Road, Houston, Texas 77056–5306.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: November 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6154 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–11–000]

MIGC, Inc.; Notice of Application of Abandonment

November 1, 2005.

Take notice that on October 26, 2005, MIGC Inc., (MIGC) tendered for filing an application for abandonment of Rate Schedule TE–5 and service. MIGC requests permission and approval to abandon the exchange of natural gas pursuant to the October 11, 1982 Exchange Agreement with Arco Oil and Gas Company, Division of Atlantic Richfield Company included in MIGC's FERC Gas Tariff, First Revised Volume No. 1, as Rate Schedule TE–5.

MIGC states that the Exchange Agreement has been terminated and that abandonment of the certificate would be in the public convenience and necessity.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 18, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6153 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–675–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 1, 2005.

Take notice that on October 26, 2005, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Seventh Revised Sheet No. 478.

National Fuel states that copies of this filing were served upon its customers and interested State commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of

Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6163 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–671–001]

Portland Natural Gas Transmission System; Notice of Compliance Filing

November 1, 2005.

Take notice that on October 28, 2005, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective on September 1, 2005:

Substitute Second Revised Sheet No. 323
Substitute Third Revised Sheet No. 357
Original Sheet No. 357A
Substitute Fifth Revised Sheet No. 380

PNGTS states that the purpose of its filing is to comply with the Commission's October 13, 2005 Letter Order in this proceeding.

PNGTS states that copies of this filing are being served on all jurisdictional customers, interested State commissions, and persons on the official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6162 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–18–000]

Riverside Energy Center, LLC; Rocky Mountain Energy Center, LLC; Calpine Riverside Holdings, LLC; Calpine Seller; LSP Riverside Holding, LLC; Notice of Filing

November 1, 2005.

Take notice that on October 28, 2005, Riverside Energy Center, LLC, Rocky Mountain Energy Center, LLC (Rocky Mountain), Calpine Riverside Holdings, LLC, Calpine Seller and LSP Riverside Holding, LLC (LSP Riverside), tendered for filing an application under section 203 of the Federal Power Act for approval of the disposition of jurisdictional facilities in connection with the sale to LSP Riverside of an indirect ownership interest in Riverside and Rocky Mountain, each of which is a public utility.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 18, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6156 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–109–022]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of Refund Report for Third-Party Environmental Proceeds

November 1, 2005.

Take notice that on October 20, 2005, Southern Star Central Gas Pipeline, Inc. (Southern Star), tendered for filing, pursuant to Article III, Paragraph D of

the Stipulation and Agreement dated January 31, 2001, a refund report of environmental proceeds received from third-party insurers.

Southern Star states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on November 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6151 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–317–001]

Texas Gas Transmission, LLC; Motion To Place Suspended Tariff Sheets Into Effect

November 1, 2005.

Take notice that on October 27, 2005, Texas Gas Transmission, LLC, Texas Gas tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1.

Texas Gas states that this motion rate filing is being made to place the suspended revised tariff sheets in Appendix A to the filing, into effect on November 1, 2005, in compliance with the Commission's Order issued May 31, 2005, in Docket No. RP05–317 at 111 FERC Paragraph ¶ 61,302 (2005). Texas Gas requests an effective date of November 1, 2005, for the proposed tariff sheets.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers, interested State commission, and all parties appearing on the official restricted service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6161 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–50–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 1, 2005.

Take notice that on October 25, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2005:

Twenty-First Revised Sheet No. 1,
Sixth Revised Sheet No. 30,
First Revised Sheet No. 31.

Transco states that the purpose of this filing is to submit a service agreement between Transco and South Jersey Gas Company and to submit the above-referenced tariff sheets pursuant to section 154.112(b) of the Commission's regulations (18 CFR 154.112(b)).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the

Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6164 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–55–000]

Young Gas Storage Company, Ltd; Notice of Operational Purchases/Sales Annual Report

November 1, 2005.

Take notice that on October 28, 2005, Young Gas Storage Company, Ltd tendered for filing its annual report of operational purchases and sales in accordance with section 29.3 of the general terms and conditions of its FERC Gas Tariff, Original Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 8, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6167 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

November 1, 2005.

Take notice that the Commission received the following electric rate filings

Docket Numbers: ER03–1312–009.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc's proposed revisions to Schedule 20 & Module A of Midwest ISO Access Transmission & Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: 10/24/2005.

Accession Number: 20051026–0011.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER03–747–000; ER05–1397–001.

Applicants: American Ref-Fuel Company of Hempstead; Covanta Hempstead Company.

Description: American Ref-Fuel Co of Hempstead et al. submits a revised Notice of Succession that contains the correct tariff designation for the sheet that was previously submitted on 8/26/05.

Filed Date: 10/24/2005.

Accession Number: 20051026–0012.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER05–150–003.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corp submits its compliance filing to FERC's Order issued 9/23/05.

Filed Date: 10/21/2005.

Accession Number: 20051026–0096.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER05–1281–002.

Applicants: FPL Energy Duane Arnold, LLC.

Description: FPL Energy Duane Arnold LLC submits an amendment to its market-based rate tariff.

Filed Date: 10/24/2005.

Accession Number: 20051026–0119.

Comment Date: 5 p.m. eastern time on Friday, November 4, 2005.

Docket Numbers: ER05–1283–001.

Applicants: Participating Transmission Owners Administrative Committee.

Description: Participating Transmission Owners Administrative Committee on behalf of New England's Participating Transmission Owners, submits supporting materials to supplement its 7/29/05 informational filing.

Filed Date: 10/21/2005.

Accession Number: 20051026–0111.

Comment Date: 5 p.m. eastern time on Friday, November 11, 2005.

Docket Numbers: ER05–1349–001.

Applicants: Western Systems Power Pool.

Description: Western Systems Power Pool, Inc submits an erratum to its 8/16/05 submittal of Substitute Fourteenth Revised Sheet No. 94.

Filed Date: 10/24/2005.

Accession Number: 20051026–0010.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER05–855–000, –001, –002.

Applicants: Duke Electric transmission.

Description: Duke Electric Transmission's response to the deficiency letter issued 9/22/05 involving its Large Generator Interconnection Agreement with Power Ventures Group, LLC.

Filed Date: 10/24/2005.

Accession Number: 20051028–0123.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER05–1409–001.

Applicants: The United Illuminating Company.

Description: The United Illuminating Co submits information in support of the 8/30/05 rate filing re the Middletown-Norwalk Project.

Filed Date: 10/26/2005.

Accession Number: 20051028–0113.

Comment Date: 5 p.m. eastern time on Wednesday, November 10, 2005.

Docket Numbers: ER05–1489–001.

Applicants: Craven County Wood Energy Limited Partnership.

Description: Craven County Wood Energy Limited Partnership supplements its 9/16/05 application for order approving market-based rates.

Filed Date: 10/25/2005.

Accession Number: 20051028–0109.

Comment Date: 5 p.m. eastern time on Tuesday, November 15, 2005.

Docket Numbers: ER06–62–000; ER03–428–004.

Applicants: ConocoPhillips Company,

Description: ConocoPhillips Co submits Second Revised Sheet No. 1 et al. to its FERC Gas Tariff, FERC Electric Tariff No. 1 pursuant to section 205 of the Federal Power Act.

Filed Date: 10/21/2005.

Accession Number: 20051026–0137.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER06–63–000.

Applicants: Take Two, LLC.

Description: Take Two, LLC submits a Petition for Acceptance of Initial Rate Schedule FERC No. 1, Waivers and Blanket Authority.

Filed Date: 10/24/2005.

Accession Number: 20051026–0138.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER06–64–000.

Applicants: Golden State Water Company.

Description: Golden State Water Co submits notice of succession to notify FERC that, effective 10/1/05, the name of Southern California Water Co was changed to Golden State.

Filed Date: 10/24/2005.

Accession Number: 20051026–0139.

Comment Date: 5 p.m. eastern time on Monday, November 14, 2005.

Docket Numbers: ER06–65–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corp submits Third Revised Sheet No. 227 to Second Revised Rate Schedule to FERC No. 51.

Filed Date: 10/25/2005.

Accession Number: 20051026–0123.

Comment Date: 5 p.m. eastern time on Tuesday, November 15, 2005.

Docket Numbers: ER06–66–000.

Applicants: El Paso Electric Company.

Description: El Paso Electric Co submits a Notice of Cancellation and a cancellation tariff sheet for the purpose of canceling its Utility Service Contract with Holloman Air Force Base, Alamogordo, New Mexico.

Filed Date: 10/25/2005.

Accession Number: 20051026–0122.

Comment Date: 5 p.m. eastern time on Tuesday, November 15, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6150 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 1, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER04–691–065.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to the Midwest ISO's Open Access Transmission & Energy Markets Tariff, Third Revised Volume No. 1.

Filed Date: 10/27/2005.

Accession Number: 20051031–0046.

Comment Date: 5 p.m. eastern time on Thursday, November 17, 2005.

Docket Numbers: ER05–1122–002.

Applicants: FirstEnergy Nuclear Generation Corp.

Description: FirstEnergy Nuclear Generation Corp submits Substitute Original Sheet No. 1 to FERC Electric Tariff, Original Volume No. 1.

Filed Date: 10/27/2005.

Accession Number: 20051031–0041.

Comment Date: 5 p.m. eastern time on Thursday, November 17, 2005.

Docket Numbers: ER05–1409–001.

Applicants: The United Illuminating Company.

Description: The United Illuminating Co submits information in support of the 8/30/05 rate filing re the Middletown-Norwalk Project.

Filed Date: 10/26/2005.

Accession Number: 20051028–0113.

Comment Date: 5 p.m. eastern time on Wednesday, November 16, 2005.

Docket Numbers: ER05–1484–001.

Applicants: XCel Energy Services, Inc.

Description: XCel Energy Services, Inc submits an errata to their 9/15/05 connection agreements to correct a typographical error found in proposed Service Agreement 224—NSP *et al.*

Filed Date: 10/26/2005.

Accession Number: 20051028–0110.

Comment Date: 5 p.m. eastern time on Wednesday, November 16, 2005.

Docket Numbers: ER05–1519–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a corrected version of their 9/30/05 filing of an executed service agreement for network integration transmission service et al with American Electric Power Service Corp.

Filed Date: 10/26/2005.

Accession Number: 20051028–0112.

Comment Date: 5 p.m. eastern time on Wednesday, November 16, 2005.

Docket Numbers: ER05–191–002.

Applicants: Perryville Energy Partners, L.L.C.

Description: Perryville Energy Partners, L.L.C. submits a Second Substitute First Revised Sheet No. 22 to its FERC Electric Tariff, Original Volume No. 2.

Filed Date: 10/19/2005.

Accession Number: 20051024–0012.

Comment Date: 5 p.m. eastern time on Thursday, November 10, 2005.

Docket Numbers: ER06–67–000.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits a Contract Demand Notice by Seattle City Light, to be effective 1/1/06.

Filed Date: 10/26/2005.

Accession Number: 20051028–0118.

Comment Date: 5 p.m. eastern time on Wednesday, November 16, 2005.

Docket Numbers: ER06–68–000.

Applicants: United Power, Inc.

Description: United Power Inc advises that due to amendments to section 201(f) of the Federal Power Act, it is not a public utility.

Filed Date: 10/26/2005.

Accession Number: 20051028–0119.

Comment Date: 5 p.m. eastern time on Wednesday, November 16, 2005.

Docket Numbers: ER06–69–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc, submits First Revised Sheet 609 *et al.* to FERC Electric Tariff No. 3, effective 10/27/05 and requests waiver of the 60-day prior notice requirement.

Filed Date: 10/26/2005.

Accession Number: 20051028–0120.

Comment Date: 5 p.m. eastern time on Wednesday, November 16, 2005.

Docket Numbers: ER06–70–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc and Northeast Utilities Service Co submits on behalf of Connecticut Light and Power Co executed Standard Large Generator Interconnection Agreement w/Kleen Energy Systems, L.L.C.

Filed Date: 10/27/2005.

Accession Number: 20051028–0094.

Comment Date: 5 p.m. eastern time on Thursday, November 17, 2005.

Docket Numbers: ER06–71–000.

Applicants: Southwestern Public Service Company.

Description: XCel Energy Services Inc on behalf of Southwestern Public Service Co submits revisions to its Rate Schedule No. 118.

Filed Date: 11/27/2005.

Accession Number: 20051031–0042.

Comment Date: 5 p.m. eastern time on Thursday, November 17, 2005.

Docket Numbers: ER06–72–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection L.L.C. submits an executed interconnection service agreement among PJM, Conectiv Delmarva Generation, Inc and Delmarva Power & Light Co and a notice of cancellation for an interim interconnection service agreement, with respect to Hay Road Unit 2.

Filed Date: 10/27/2005.

Accession Number: 20051031–0054.

Comment Date: 5 p.m. eastern time on Thursday, November 17, 2005.

Docket Numbers: ER06–73–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, L.L.C. submits an executed interconnection service agreement among PJM, Conectiv Delmarva Generation, Inc and Delmarva Power & Light Co and a notice of cancellation for an interim interconnection service agreement, with respect to Hay Road Units 1 and 3.

Filed Date: 10/27/2005.

Accession Number: 20051031–0043.

Comment Date: 5 p.m. eastern time on Thursday, November 17, 2005.

Docket Numbers: ER96–149–011.

Applicants: Dartmouth Power Associates Limited Partnership.

Description: Dartmouth Power Associates, LP's notice of change in status.

Filed Date: 10/26/2005.

Accession Number: 20051028–0111.

Comment Date: 5 p.m. eastern time on Wednesday, November 16, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6149 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–096]

Alabama Power Company; Notice of Availability of Environmental Assessment

November 1, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Martin Dam Hydroelectric Project (FERC No. 349) and has prepared an Environmental Assessment (EA) for the proposed non-project use. The project is located on Lake Martin near Dadeville, Tallapoosa County, Alabama.

In the application, Alabama Power Company (licensee) requests Commission authorization to permit The Profile Group to use project lands to build a walkway along the shoreline and 19 dock structures with 128 boat slips. The EA contains Commission staff's analysis of the probable environmental impacts of the proposal and concludes that approving the licensee's application, with staff's recommended environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled ''Order Approving Non-Project Use of Project Lands and Waters,'' which was issued October 31, 2005, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the project number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6160 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 1, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12602–000.

c. *Date filed:* July 1, 2005.

d. *Applicant:* Bull Lake Dam Hydro, LLC.

e. *Name of Project:* Bull Lake Dam Project.

f. *Location:* The project would be located in the Bull Lake Creek, in Fremont County, Wyoming. The project would use the Bull Lake Dam owned by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Bureau of Reclamation's Bull Lake Dam and would consist of: (1) A proposed 260-foot-long, 102-inch-diameter, steel penstock, (2) proposed powerhouse containing a generating with an installed capacity of 3.9 megawatts, (3) a proposed 1-mile-long 25 kilovolt transmission line; and (4) appurtenant facilities. The project would have an annual generation of 7.8 gigawatt hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the

filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6158 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12608–000]

Alternatives Unlimited, Inc., Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 1, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 12608–000.

c. *Date filed:* August 15, 2005.

d. *Applicant:* Alternatives Unlimited, Inc.

e. *Name of Project:* Alternatives Hydro Power Project.

f. *Location:* On the Mumford River, in the Town of Northbridge, Worcester County, Massachusetts. The project would not use Federal land.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. sections 2705 and 2708.

h. *Applicant Contact:* Kathleen D. Hervol. Beals and Thomas, Inc. Reservoir Corporate Center, 144 Turnpike Road (Route 9), Southborough, MA 01772–2104, (508) 366–0560.

i. *FERC Contact:* Stefanie Harris, (202) 502–6653 or *stefanie.harris@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The Alternatives Hydro Power Project would consist of: (1) The existing 127-foot-long by 15.5-foot-high Ring Shop Dam consisting of a concrete 9.5-foot-high spillway topped with 2.5-foot-high flashboards, a waste gate, and two inlet structures located at the north and south ends of the spillway; (2) an existing 1.3-acre reservoir enlarged to 2 acres with a normal full pond elevation of 285.1 feet above mean sea level; (3) a restored 8-foot-wide head gated intake structure; (4) a new 23-foot by 6-foot metal service platform (to be enclosed for a future powerhouse) located at the south side of the dam containing three generating units with a total installed capacity of 45 kilowatts; and (5) appurtenant facilities. The restored project would have an average annual generation of 340 megawatt-hours.

m. A copy of the filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6159 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–91–000]

Calhoun LNG, L.P.; Notice of Technical Conference

November 1, 2005.

On Tuesday, November 15, 2005, at 8:30 a.m. (CST), staff of the Office of Energy Projects will convene a cryogenic design and technical conference regarding the proposed Calhoun LNG Project. The cryogenic conference will be held in the Bauer Community Center. The community center is located at 2300 North Highway 35, Port Lavaca, TX 77979. For center details call (361) 552–1234.

In view of the nature of critical energy infrastructure information and security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has

specifically requested to intervene as a party) and to representatives of interested Federal, State, and local agencies. Any person planning to attend the November 15th cryogenic conference *must register* by close of business on Thursday, November 10, 2005. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/ registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the referenced online link) to (202) 208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. Upon arrival at the community center, check the reader board in the lobby area for the venue. For additional information regarding the cryogenic conference, please contact Ghanshyam Patel at (202) 502–6431.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6152 Filed 11–4–05; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, November 16, 2005, 10 a.m. Eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED

Open Session

1. Announcement of Notation Votes,
2. Report on Commission Operations: EEOC Actions in the Aftermath of Hurricane Katrina, and
3. Revisions to the Employer Information Report (EEO–1).

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer at (202) 663–4070.

Dated: November 3, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05–22283 Filed 11–3–05; 3:42 pm]

BILLING CODE 6790–06–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Additional Item To Be Considered at Open Commission Meeting, Thursday, November 3, 2005

November 1, 2005.

The Federal Communications Commission will consider one additional item on the subject listed below at the Open Meeting on Thursday, November 3, 2005, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
4	Enforcement	Title: Review of the Emergency Alert System (EB Docket No. 04–296). Summary: The Commission will consider a First Report and Order and Further Notice of Proposed Rule-making concerning the Emergency Alert System rules.

The prompt and orderly conduct of Commission business permits less than 7-days notice be given for consideration of this item.

Action by the Commission, November 1, 2005. Chairman Martin; Commissioners Abernathy, Copps, and Adelstein voting to consider this item.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22235 Filed 11–3–05; 12:35 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, November 8, 2005, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule Implementing Senior Examiner Post-employment Restrictions under section 10(k) of the Federal Deposit Insurance Act, as added by the Intelligence Reform and Terrorism Prevention Act of 2004.

Memorandum and resolution re: Final Part 334 Medical Privacy Regulations under the Fair and Accurate Credit Transactions Act of 2003.

Discussion Agenda

Memorandum re: The FDIC Insurance Funds: Outlook and Premium Rate Recommendations for the First Semiannual Assessment Period of 2006.

Memorandum and resolution re: Final Rule—Amendments to Annual Audit and Reporting Requirements (Part 363) to Raise the Asset Size Threshold for Assessments of Internal Control Over Financial Reporting and for Independent Audit Committees from $500 Million to $1 Billion.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); or (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive

Secretary of the Corporation, at (202) 898–7122.

Dated: November 1, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–22174 Filed 11–2–05; 5:10 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Thursday, November 10, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Final Rules and Explanation and Justification for the $5,000 Levin Fund.
Exemption for State, District, and Local Party Committees.
Routine Administrative Matters.

FOR INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–22275 Filed 11–3–05; 2:51 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, November 9, 2005. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION: *Approval of 2006 Financing Corporation (FICO) Administrative and Non-Administrative Budgets and Delegation of Authority to Approve Future FICO Budgets.*

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: *Periodic Update of Examination Program Development and Supervisory Findings.*

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: November 2, 2005.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 05–22212 Filed 11–3–05; 11:52 am]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12¼% for the quarter ended September 30, 2005. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 31, 2005.

Terry Hurst,

Acting Deputy Assistant Secretary, Finance.

[FR Doc. 05–22117 Filed 11–4–05; 8:45am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Privacy and Confidentiality.

Time and Date: November 15, 2005 1 p.m.–5 p.m.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this working session will be to continue the discussion on a letter and report to the HHS Secretary on Privacy and the National Health Information Network.

Contact Person For More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Maya A. Bernstein, Lead Staff for Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, 434E Hubert H. Humphrey Building, 200 Independence Avenue, SW., 20201; telephone (202) 690–7100; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telehpone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 26, 2005.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (OSDP) Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–22116 Filed 11–4–05; 8:45am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10102]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection*: National Implementation of the Hospital Consumer Assessment of Health Providers and Systems Survey (HCAHPS); *Form No.*: CMS–10102 (OMB# 0938-NEW); *Use*: The intent of the HCAHPS initiative is to provide a standardized survey instrument and data collection methodology for measuring patients' perspectives on hospital care. While many hospitals collect information on patient satisfaction, there is no national standard for collecting or publicly reporting this information that would enable valid comparisons to be made across all hospitals. In order to make ''apples to apples'' comparisons to support consumer choice, it is necessary to introduce a standard measurement approach. HCAHPS can be viewed as a core set of questions that hospitals can combine with their customized items. Participation in HCAHPS is voluntary. Hospitals will begin using HCAHPS, also known as Hospital CAHPS or the CAHPS Hospital Survey, under the auspices of the Hospital Quality Alliance, a private/public partnership that includes hospital associations, consumer groups, payors and government agencies that share a common interest in reporting on hospital quality; *Frequency*: Monthly; *Affected Public*: Individuals or households; *Number of Respondents*: 2,852,000; *Total Annual Responses*: 2,852,000; *Total Annual Hours*: 285,200.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. (Note: This package has been modified since the November 19, 2004 publication.)

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on December 7, 2005.

OMB Human Resources and Housing Branch, Attention: CMS Desk Officer, New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: October 28, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–22131 Filed 11–4–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Council on Development Disabilities Program Performance Report.

OMB No.: 0980–0172.

Description: A Development Disabilities Council Program Performance Report is required by Federal statute. Each State Developmental Disabilities Council must submit an annual report for the preceding fiscal year of activities and accomplishments. Information provided in the Program Performance Report will be used (1) in the preparation of the biennial Report to the President, the Congress, and the National Council on Disabilities and (2) to provide a national perspective on program accomplishments and continuing challenges. This information will also be used to comply with requirements in the Government Performance and Results Act of 1993.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Council on Developmental Disabilities Program Performance Report ..	55	1	44	2,420

Estimated Total Annual Burden Hours: 2,420.

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: *rsargis@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 31, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–22096 Filed 11–4–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Protection and Advocacy Program Performance Report.

OMB No.: 0980–0160.

Description: This information collection is required by Federal statute. Each State Protection and Advocacy System must prepare and submit a Program Performance Report for the preceding fiscal year of activities and accomplishments and of conditions in

the State. The information in the Annual Report will be aggregated into a national profile of Protection and Advocacy Systems. It will also provide the Administration on Developmental Disabilities (ADD) with an overview of program trends and achievements and will enable ADD to respond to administration and congressional requests for specific information on program activities. This information will also be used to submit a Biennial Report to Congress as well as to comply with requirements in the Government Performance and Results Act of 1993.

Respondents: Protection & Advocacy Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Developmental Disabilities Protection and Advocacy Program Performance Report	57	1	44	2,508

Estimated Total Annual Burden Hours: 2,508.

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 31, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–22097 Filed 11–4–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR 1301 Head Start Grants Administration.

OMB No: 0980–0243.

Description: 45 CFR part 1301 contains provisions applicable to program administration and grants administration under the Head Start Act, as amended. The provisions specify the requirements for grantee agencies for insurance and bonding, the submission of audits, matching of federal funds, accounting systems certifications and other provisions applicable to personnel management.

Respondents: Head Start and Early Start Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Part 1301	2,700	1	2	5,400

Estimated Total Annual Burden Hours: 5,400.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 31, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–22098 Filed 11–4–05; 8:45am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Invitation To Comment on Proposed Data Composites and Potential Performance Areas and Measures for the Child and Family Services Review

AGENCY: Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Invitation to comment on proposed data composites and potential performance areas and measures for the Federal Child and Family Services Review (CFSR).

SUMMARY: This notice is to advise the public of ACF's plan to replace the six national data measures used for the CFSR with six data composites addressing the child welfare domains of maltreatment recurrence, maltreatment in foster care, timeliness of adoptions, timeliness of reunifications, placement stability, and permanency for children. The plan to develop data composites is a response to a recommendation made by a consultant under contract with ACF to study the CFSR process. The recommendation is based on input from a CFSR workgroup convened by the consultant at the end of the first round of CFSRs to assist in identifying areas needing improvement.

ACF expects that each data composite will incorporate multiple performance areas and measures relevant to a specific domain. ACF plans to use State performance on the data composites as part of its evaluation of a State's substantial conformity with specific outcomes assessed through the CFSR. National standards will be developed for each of the domains represented by the six data composites.

ACF's plan to replace existing measures with data composites is consistent with the final CFSR regulation at 45 CFR 1355.34(b)(4) and (5), which authorizes the Secretary of HHS to add, amend, or suspend any of the statewide data indicators when appropriate, and to adjust the national standards when appropriate. The proposed plan also complies with the requirements of section 1123A of the Social Security Act (the Act) for ACF to assess State child welfare agencies' compliance with titles IV–B and IV–E of the Act as implemented in 45 CFR 1355.31 through 1355.37.

We invite the public to comment on the data composites, performance areas, and measures proposed in this announcement.

DATES: Written comments must be submitted to the office listed in the address section below either by mail or e-mail on or before (30 days).

ADDRESSES: Mail Address: Children's Bureau, 370 L'Enfant Promenade SW., Washington, DC 20447. E-mail address: *cfsrmeasures@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: John Hargrove, 202–205–8634.

SUPPLEMENTARY INFORMATION:

CFSR and Existing Outcome Measures

The CFSR is ACF's results-oriented comprehensive monitoring system designed to promote continuous improvement in the outcomes experienced by children and families who come into contact with State public child welfare agencies. ACF developed the CFSR in response to a mandate in the Social Security Amendments of 1994 (see section 1123A of the Social Security Act) for the Department of Health and Human Services to promulgate regulations for reviews of State child and family services programs under titles IV–B and IV–E of the Social Security Act. ACF's final regulations on the CFSR process, issued in 2000, can be found at 45 CFR 1355.31 through 1355.37. Between fiscal years (FY) 2001 and 2004, ACF conducted a CFSR of every State, the District of Columbia, and Puerto Rico.

The CFSR assesses State performance on seven outcomes, seven systemic factors, and six national data measures that ACF adapted from measures originally developed for the *Report to Congress on Child Welfare Outcomes* (see attachment A for the report to Congress measures and the CFSR Outcomes). Data for the six national data measures come from the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS). AFCARS is a federally mandated data system established for the collection of foster care and adoption data. NCANDS is a voluntary data collection system that is the primary source of national information on abused and neglected children who are known to State agencies providing child protective services.

ACF established national standards for each of the six data measures and used the standards as part of the assessment of a State's substantial conformity with particular outcomes. ACF described these six data measures in the preamble to the final CFSR regulation, published in the **Federal Register** (65 FR 4024–4025). This same citation provides information on how ACF calculated the national standards associated with each of the six data measures. Subsequently, ACF issued information memoranda on the specific national standards that would be used in the initial CFSR implementation (see ACYF–CB–IM–00–11 and ACYF–CB–IM–01–07).

The following performance measures and national standards were used during the first round of CFSRs as part of the assessment of a State's substantial conformity with CFSR Safety Outcome 1—Children are, first and foremost, protected from abuse and neglect:

- Repeat maltreatment—Of all children who were victims of substantiated or indicated child abuse and/or neglect during the first 6 months of the reporting period, 6.1 percent or less had another substantiated or indicated report within a 6-month period.
- Maltreatment of children in foster care—Of all children who were in foster care during the reporting period, 0.57 percent or less were the subject of substantiated or indicated maltreatment by a foster parent or facility staff member.

The following performance measures and national standards were used as part of the assessment of a State's substantial conformity with CFSR Permanency Outcome 1—Children will have permanency and stability in their living situations:

- Timeliness of reunification—Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, 76.2 percent or more were reunified in less than 12 months from the time of the latest removal from home.
- Re-entry into foster care—Of all children who entered foster care during the reporting period, 8.6 percent or less were re-entering foster care within 12 months of a prior foster care episode.
- Timeliness to adoption—Of all children who exited foster care to a finalized adoption, 32 percent or more exited foster care in less than 24 months from the time of the latest removal from home.
- Placement stability—Of all children who have been in foster care for less than 12 months from the time of the latest removal from home, 86.7 percent or more have had no more than 2 placement settings.

Recommendation To Develop Data Composites

ACF views the CFSR as a dynamic process and has made ongoing improvements in the process in response to lessons learned in the field

and to recommendations from State child welfare agency administrators. After completion of the first round of CFSRs in FY 2004, ACF contracted with a consultant to study the CFSR and make further recommendations regarding strategies for improvement. To assist them in this task, the consultant convened a CFSR workgroup of State child welfare agency administrators and child welfare researchers and, based on input from this workgroup, produced a set of recommendations for ACF. One recommendation was to replace the existing CFSR single data measures for which national standards were established with data composites that incorporate a wider range of performance areas relevant to a particular child welfare domain. ACF proposes to implement this recommendation for the following reasons:

- The recommendation is consistent with our observations during the first round of the CFSR that expanding the scope of data pertaining to a particular child welfare domain will provide a more effective assessment of State performance. For example, expanding the scope of data pertaining to the timeliness of reunification will address various performance areas relevant to this domain, including the permanency of the reunification.
- Data composites will provide a more holistic view of State performance in a particular domain than a single data measure can achieve. For example, the current CFSR measure of timeliness of adoption considers the percentage of children adopted within 24 months of entering foster care, but not children's experiences with regard to the timeframes between key points in the adoption process, such as the time from termination of parental rights (TPR) to a finalized adoption.
- Data composites will ensure that the data component of a State's performance with regard to a particular domain will not depend on one measure. For example, a State's performance regarding the data composite for the domain of timeliness to adoption may be uneven, with performance higher in one area than in another. However, overall performance on the composite may be high relative to other States. Thus, the data composite will account for both the strengths and weaknesses that a State exhibits within a particular domain.
- Data composites will allow the development of national standards that account for variation in State practices and policies. For example, there are differences in State policies and practices regarding reunification. In some States, children are physically reunified with families several months before legal custody is transferred to parents or guardians. States indicate that this practice allows them to ensure that the families receive the services and monitoring necessary to support the reunification process. In contrast, in other States, legal custody and physical custody are transferred simultaneously. Using data composites for the domain of timeliness of reunification will enhance ACF's ability to account for these variations in practice.
- Data composites are being successfully used by the Federal government to assess other programs. For example, composite measures are being developed and used for the No Child Left Behind initiative. In addition, composite measures have been used to evaluate the performance of hospitals in various health-related domains.

Although the methodology for calculating the scores for the data composites has not been finalized, the following describes the approach that is under consideration:

Possible composite methodology: Six data composites are under consideration (these are described in the section below), with each composite pertaining to a different domain of child welfare practice (*i.e.*, recurrence of maltreatment, maltreatment of children in foster care, timeliness of reunifications, timeliness of adoptions, placement stability, and achieving permanency). It is expected that each composite will incorporate two or more performance areas, with a specific measure developed for each performance area. The final performance areas to be included in each data composite will depend upon the following: (1) Input from the field in response to this announcement, and (2) the results of principle components analyses regarding the viability of inclusion of specific performance areas in a particular domain. The principle components analyses also will permit a determination of the relative contribution of each performance area to the overall domain represented by the data composite. Once the performance areas and measures are identified, a score will be calculated for each State for each data composite based on the appropriate weighting (as determined from the analyses) of a State's performance in each of the performance areas.

For each data composite, ACF is considering using the distribution of scores across States to establish a national standard (the methodology to be used to set the standard has not yet been determined). This will result in six separate standards, one for each domain. Because the primary purpose of a data composite is to capture overall performance in a particular domain, ACF will not establish a national standard for the individual performance areas incorporated in the composites. Therefore, States will not be expected to meet a standard for any individual performance area but to achieve an overall performance level in a particular domain related to safety or permanency. However, ACF will provide States with information regarding each performance area with regard to the mean, median, and range of scores across States to enable a State to identify the performance areas within a composite where improvements may be needed.

ACF proposes to use the national standards developed for the data composites as part of the assessment of State performance in the second round of CFSRs. These will be used in conjunction with findings from the CFSR onsite case reviews in the overall determination of a State's substantial conformity with specific outcomes.

Proposed Data Composites and Performance Areas

A table providing a comparison of the existing CFSR data measures and the proposed data composites and performance areas is provided in attachment B. Additional information regarding the data composites and performance areas is presented below. The criteria for selection of measures for each performance area are the following: (1) They must be measurable using data available from AFCARS and NCANDS, and (2) they must be measurable within the CFSR timeframes for assessing State improvement in performance.

CFSR Safety Outcome 1: Children are First and Foremost Protected From Abuse and Neglect

Safety Composite 1: Recurrence of Maltreatment

Performance on Safety Composite 1—Recurrence of maltreatment—will be part of the assessment of a State's substantial conformity with CFSR Safety Outcome 1—Children are, first and foremost, protected from abuse and neglect. Safety Composite 1 reflects the responsibility of a State child welfare system to ensure the ongoing safety of children who come into contact with the system through a maltreatment allegation.

The following performance areas are under consideration for this data composite:

- Recurrence of substantiated or indicated maltreatment reports.

• Multiple unsubstantiated maltreatment reports.
• Timeliness of initiating investigations of child maltreatment reports.
• Timeliness of dispositions of maltreatment reports.

Safety Composite 1—Performance Area 1: Recurrence of Substantiated or Indicated Maltreatment Reports

Justification for inclusion: This performance area provides an assessment of a child welfare agency's effectiveness in responding to the safety of children who are found to be victims of abuse or neglect.[1] It addresses the question of whether the agency took the necessary actions to ensure that the children do not experience abuse or neglect again.

Possible measure: Of all children who were victims of substantiated or indicated child abuse and/or neglect during the first 6 months of the reporting period, what percentage had another substantiated or indicated report within a 6-month period? This is the measure that was used during the first round of CFSRs to assess maltreatment recurrence.

Relevant issues: This measure focuses on recurrence within a 6-month period because it is not possible to link children reported to the NCANDS Child File across years. In support of the measure, research findings suggest that the incidence of occurrence of a substantiated maltreatment report within 12 months of a prior substantiated report is not significantly greater than the incidence of recurrence within 6 months.[2]

Some CFSR workgroup participants recommended that the CFSR include measures designed to identify the types of maltreatment that recur and the characteristics (such as age and race/ethnicity) of children who are the victims of maltreatment recurrence. ACF determined that, although these measures address important research questions about maltreatment recurrence and are appropriate for a research initiative, they are beyond the scope of the CFSR, which is intended to provide a general assessment of State performance in particular domains. However, ACF encourages States to examine their own data to identify the factors associated with maltreatment recurrence.

Safety Composite 1—Performance Area 2: Multiple Unsubstantiated Maltreatment Reports

Justification for inclusion: ACF is seeking input from the field regarding the feasibility of capturing as part of Safety Composite 1 the child safety issues relevant to multiple ''unsubstantiated'' maltreatment reports. (The term ''unsubstantiated report'' does not include maltreatment allegations that are not accepted for investigation [*i.e.*, are ''screened out], those that are investigated and found to be ''intentionally false,'' or those that are ''closed without a finding.[3]'') Research findings indicate the following: (1) Children who are the subject of unsubstantiated maltreatment reports are highly likely to have experienced abuse or neglect, (2) there is extensive variation across States regarding the criteria used to make a substantiation determination, and (3) the decision as to whether a maltreatment report is substantiated or unsubstantiated often is not based on consistent criteria even within a State.[4] In addition, a recent finding of the federally funded study entitled *Longitudinal Studies of Child Abuse and Neglect*, found no differences in the behavioral and developmental outcomes of 8-year-old children with unsubstantiated and substantiated maltreatment reports filed when the children were between the ages of 4 and 8.[5]

Possible measure: ACF welcomes comments from the field regarding possible measures for this performance area. Although research findings suggest that a child who is the subject of multiple unsubstantiated maltreatment reports is likely to be experiencing maltreatment recurrence, ACF is concerned that a measure developed for this performance area may result in unintended consequences. For example, States that have a practice of monitoring families in which a child is the subject of an unsubstantiated report or of providing services to these families may be discouraged from implementing these practices if the ongoing surveillance of the family increases the likelihood that a subsequent maltreatment allegation (either substantiated or unsubstantiated) may occur. ACF also wants to ensure that the measure will, for the most part, exclude maltreatment allegations that are without merit.

Relevant issues: Although several participants in the CFSR workgroup recommended that a measure of recurrence of unsubstantiated reports should be incorporated into the CFSR safety assessment, a few were not in accord with this recommendation. Those that were opposed to the recommendation expressed the concerns identified above.

Safety Outcome 1—Performance Area 3: Timeliness of Initiating Investigations of Child Maltreatment Reports

Justification for inclusion: NCANDS defines the initial investigation as beginning when the child protective services (CPS) agency has face-to-face contact with, or attempts to have face-to-face contact with, the alleged victim. If face-to-face contact with the alleged victim is not possible, the initial investigation is considered as beginning when CPS first contacts any party who can provide information essential to the investigation or assessment. ACF's proposal to include timeliness of initiating investigations as a performance area for Safety Composite 1 is based on the following assumptions:

• The continued risk of harm to a child who is the subject of a maltreatment report is best assessed through face-to-face contact with the child, and
• Protection of the child is enhanced when this face-to-face contact occurs quickly after a maltreatment report is received by the agency.

Possible measures: Two measures of this performance area are under consideration and are provided for review and comment.

• During the reporting year, of all children who were the subject of an investigation conducted in response to a report alleging maltreatment, what was the mean (or median) length of time between receipt of the report and the initiation of the investigation?
• During the reporting year, of all children who were the subject of an investigation conducted in response to a report alleging maltreatment, what percent had investigations that were initiated in the following timeframes:

[1] In *Child Maltreatment 2003*, a child victim is defined as a child for whom an incident of abuse or neglect has been substantiated or indicated by an investigation or assessment.

[2] Fluke, J. *et al.* (1999). Recurrence of maltreatment: An application of the National Child Abuse and Neglect Data System. *Child Abuse and Neglect, 23* (7), 633–650. DePanfilis, D., and Zuravin, S. (1998). Rates, patterns, and frequency of child maltreatment recurrences among families known to CPS. *Child Maltreatment, 3* (1), 27–42.

[3] The major NCANDS disposition categories are defined in *Child Maltreatment, 2002*, U.S. Department of Health and Human Services, Administration on Children, Youth and Families.

[4] Drake, B. (1996). Unraveling ''unsubstantiated.'' *Child Maltreatment, 1* (3), 261–271. English *et al.* (2002). Causes and consequences of the substantiation decision in Washington State Child Protective Services. *Children and Youth Services Review, 24* (11), 817–851. Leiter *et al.* (1994). Substantiated and unsubstantiated cases of child maltreatment: Do their consequences differ? *Social Work Research, 18* (2), 67–82.

[5] Hussey, J. *et al.* (2005). Defining maltreatment according to substantiation: Distinction without a difference? Presentation at the 15th National Conference on Child Abuse and Neglect, Boston, MA: April, 2005.

Within 1 day (24 hours)?—This timeframe is conceptualized as a ''timely response.''

After 7 days?—This timeframe is conceptualized as one that did not adequately address the safety of the child.

Relevant issues: Because ACF believes that the ongoing risk of harm to a child is most effectively assessed through face-to-face contact with the child and family, and that this contact should take place quickly after a report is received, the proposed measures do not address variation across States with regard to required timeframes for responding to a maltreatment report, which range from a few hours to a few weeks (with a few States having no time requirements). The measures also do not take into account the ''priority'' systems established by many States that result in assigning different timeframes to different reports based on perceived risk of harm to the child. These timeframes also range from a few hours to a few weeks.

Some States have established an ''alternative response'' (also called a differential response) to maltreatment reports. Under this approach, a maltreatment report may be referred for an assessment of the family rather than for an investigation to determine whether child maltreatment did or did not occur. Usually, reports are referred for an assessment when a CPS agency determines that the risk of harm to the child is low. ACF has not yet decided whether the timeliness of initiating alternative response assessments will be included in the proposed measure. A concern is that not all States that implement an alternative response approach report these activities to the NCANDS Child File. ACF welcomes comment and suggestions from the field regarding this issue.

Safety Composite 1—Performance Area 4: Timeliness of Dispositions of Child Maltreatment Reports

Justification for inclusion: This performance area is included in Safety Composite 1 for the following reasons.

- Until an investigation is completed and the risk of harm to a child is fully assessed, States may not be in a position to identify the needs of the child and family accurately and to match services to the needs. This could affect the possibility of future maltreatment.
- When a disposition is not made in a timely manner and the agency receives a subsequent report of alleged maltreatment of the child, the lack of a disposition may affect the agency's ability to accurately evaluate the subsequent report since it may not have full information pertaining to the earlier investigation.
- It is not until the disposition that an agency's plan is sanctioned by the court. The court sanctioning ensures that the agency and the parents are aware that they are required to carry out the actions detailed in the plan.

Possible measures: The following two measures are under consideration.

- During the reporting year, of all children who were the subject of investigations conducted in response to reports alleging maltreatment, what was the mean (or median) length of time between receipt of the report and the disposition?
- During the reporting year, of all children who were the subject of investigations conducted in response to maltreatment reports, what percent had investigations that reached a disposition in various timeframes (*e.g.*, 60 days from the time of receipt of the report, between 60 and 90 days, longer than 90 days).

ACF welcomes comments on the decision to begin the ''disposition timeframe'' with the receipt of the maltreatment report rather than with the initiation of the investigation.

Relevant issues: The proposed measures do not include information pertaining to assessments made as a result of an alternative response. Many States that implement an alternative response do not reach a disposition in these situations, even when the decision is made to open a case for services. Although the NCANDS Child File includes disposition categories of ''Alternative Response Victim'' and ''Alternative Response Nonvictim,'' only three States report Alternative Response Victims, and only nine report Alternative Response Nonvictims.

CFSR Safety Outcome 2: Children Are Safely Maintained in Their Homes Whenever Possible and Approrpriate

Safety Composite 2: Maltreatment of Children in Foster Care

Performance on Safety Composite 2 will be part of the assessment of a State's substantial conformity with CFSR Safety Outcome 2—Children are safely maintained in their own homes whenever possible and appropriate. Although the wording of CFSR Safety Outcome 2 specifies the safety of children maintained in their own homes, the outcome also applies to maintaining children safely while they are in the ''homes'' in which they are placed by the child welfare agency, including licensed foster family homes, relative homes, group homes, or institutions. The composite reflects the primary responsibility of a child welfare system to ensure that children are not victims of maltreatment while they are under the care and placement responsibility of the State.

The following two performance areas are under consideration for this composite:

- Maltreatment of children in foster care by a foster parent or facility staff member.
- Maltreatment of children in foster care by their parents.

Safety Composite 2—Performance Area 1: Maltreatment of Children in Foster Care by a Foster Parent or Facility Staff Member

Justification for inclusion: ACF, and the public in general, expect State child welfare agencies to ensure that State-appointed caregivers of children in foster care do not abuse or neglect the children placed in their care.

Possible measure: Of all children who were in foster care during the reporting period, what percent was the subject of substantiated or indicated maltreatment by a foster parent or facility staff member?

Relevant issues: This measure was used to assess maltreatment of children in foster care during the first round of CFSRs. Some concern was expressed by the field that the measure inadvertently includes children who were maltreated by foster care providers or facility staff members but who were not in foster care with the State child welfare system at the time of the maltreatment (*i.e.*, the children were in another system or they were in private foster or facility care). A recent requirement that all children in an NCANDS Child File have an AFCARS identification number will permit an identification of these children so that they can be excluded from the measure.

Some CFSR workgroup participants recommended that there be separate measures for maltreatment of children in foster care by a foster parents and maltreatment by a facility staff member. However, a review of the data found that the incidence of maltreatment by these ''perpetrator types'' taken separately is too small to constitute meaningful measures.

Some CFSR workgroup participants also recommended that ACF develop a measure that identifies the extent of maltreatment of children who are placed by the State with relatives as foster caregivers, including relatives who are licensed foster parents and relatives who are not licensed foster parents. At present, the NCANDS Child File does not allow for this level of detail regarding relative perpetrators.

Although a relative may be identified in NCANDS as a perpetrator, it is not possible to determine whether the relative also was the child's State-appointed caretaker. Similarly, a licensed foster parent may be identified as the perpetrator, but it is not possible to determine whether the licensed foster parent also is a relative.

Safety Outcome 2—Performance Area 2: Maltreatment of Children in Foster Care by Their Parents

Justification for inclusion: State child welfare agencies are responsible for ensuring that any safety concerns regarding parental contacts with a child in foster care are appropriately addressed. An analysis of NCANDS Child File data using matching AFCARS identification numbers found that in FY 2003, a substantial number of children who were the victims of maltreatment by a parent were in foster care for at least 30 days before the date of the maltreatment report. In most States, the number of these children was considerably larger than the number of children who were victims of maltreatment by foster parents or facility staff.

Possible measure: Of all children who were in foster care for longer than 30 days during the reporting year, what percent were the subject of a substantiated or indicated maltreatment report in which the perpetrator was the parent and the report was received after the child had been in foster care for at least 30 days?

Relevant issues: The proposed measure uses the maltreatment report date as a ''proxy'' for the date of the maltreatment itself. Because children entering foster care sometimes report maltreatment events that occurred prior to entry, the measure excludes maltreatment reports involving parent perpetrators that were received during the first 30 days that the child was in foster care. The 30-day ''exclusion'' is based on analysis of NCANDS data demonstrating a substantial decline in the number of children in foster care reported as being maltreated by a parent after the first 7 days the child is in foster care, a more moderate decline in this number from 8 to 30 days after entry into foster care, and then a leveling off after 30 days.

Although the most recent version of the NCANDS Child File includes a data element pertaining to the date of the maltreatment incident, States are not yet consistently reporting this new data element. When States report information pertaining to the maltreatment incident date in a consistent manner, the measure of maltreatment of children in foster care by their parents can be revised to incorporate the incident date and it will no longer be necessary to incorporate a 30-day exclusion.

CFSR Permanency Outcome 1: Children Have Permanency and Stability in Their Living Situations

Permanency Composite 1: Timeliness and Permanency of Reunifications

Performance on Permanency Composite 1 will be part of the determination of a State's substantial conformity with CFSR Permanency Outcome 1—Children will have permanency and stability in their living situations. The composite addresses State child welfare system's performance with regard to promoting a safe, timely, and permanent family reunification by assisting families to resolve the problems that resulted in the children being removed from the home. The performance areas under consideration for the composite are the following:

- Timeliness of reunifications of children exiting foster care in a given fiscal year.
- Timeliness of reunifications of children entering foster care in a given fiscal year.
- Permanency of reunifications.

Permanency Composite 1—Performance Area 1: Timeliness of Reunifications of Children Exiting Foster Care

Justification for inclusion: Exits from foster care represent the outcomes experienced by children in foster care, and exits to reunification reflect an agency's success with regard to its function of promoting the reintegration of the family. A primary goal of ACF and the Adoption and Safe Families Act of 1997 (ASFA) is to ensure that children do not remain in foster care any longer than is necessary to achieve permanency. Information about the timeliness of children exiting foster care to reunification provides a basis for assessing State performance in achieving this goal.

Possible measures: A number of measures are under consideration for this performance area, with each addressing a particular variation in State practices and policies pertaining to reunification. For each measure, we are proposing two possible approaches to assessing timeliness to reunification. One approach that was used in the first round of the CFSR reflects an expectation that 12 months is a sufficient amount of time to bring about a reunification for most children. The second approach examines timeliness to reunification as a function of a State's median length of stay in foster care for all children exiting foster care to reunification, with the expectation that the distribution of these median across States would be used to set a performance expectation. Both approaches are included in each of the following measures and ACF welcomes input from the field regarding these approaches.

- During the reporting year, of all children reunified with their parents or caretakers at the time of discharge from foster care, (1) what percent were reunified in less than 12 months from the time of the latest removal from home? OR, (2) what was the median length of stay in foster care (in months) of all children exiting to reunification? A frequent criticism of this measure is that it does not account for variations in State practices and policies that impact the time between entry into foster care and exit to reunification. The following measures are designed to address these concerns.
- During the reporting year, of all children reunified with their parents or caretakers at the time of discharge from foster care who were in foster care for more than 7 days (at least 8 days), (1) what percent were reunified in less than 12 months from the time of the latest removal from home? OR, (2) what was the median length of stay in foster care (in months) for these children? This measure is intended to address variations among States with regard to the practice of removing a child from his or her home at the onset of a maltreatment investigation until an initial court hearing is held to determine whether the child should be returned home or remain in foster care.
- During the reporting year, of all children reunified with their parents or caretakers at the time of discharge from foster care who were in foster care for more than 30 days (at least 31 days), (1) what percent were reunified in less than 12 months from the time of the latest removal from home? OR (2) what was the median length of stay in foster care (in months) for these children? This measure addresses another type of variation among States. Some States tend to remove a child from his or her home while providing very short-term services to the family in response to a family crisis. In contrast, other States, in a similar situation, tend to provide services to resolve the crisis while the child remains in the home, if it is safe to do so. This measure is designed to assess timeliness of reunifications for children and families who may need more than very short-term services to resolve the issues leading to removal.

An analyses of the data found that when performance on this measure is compared to performance on the existing CFSR measure of reunification, five States drop out of the top quartile with regard to the percent of reunifications occurring within 12 months of a child's entry into foster care.

• During the reporting year, of all children reunified with their parents or caretakers at the time of discharge from foster care, (1) what percent either were reunified in less than 12 months from the time of the latest removal from home or were placed in a trial home visit within 11 months of removal and whose last placement setting prior to discharge was a Trial Home Visit, OR (2) what was the median length of stay in foster care (in months) of children exiting to reunification or of children whose placement was a Trial Home Visit at least 30 days prior to reunification. Under the AFCARS definitions, a child can be reported as discharged from foster care to reunification only after the court discharges the agency's responsibility for the child (or 6 months after the child's return in certain circumstances). However, some States maintain placement and care responsibility of children for a period of time after physical reunification, usually ranging from 3 to 6 months, in order to provide services and ongoing monitoring. ACF has instructed States to report these children to AFCARS as being in a Trial Home Visit placement setting. This measure is designed to assess timeliness to reunification in a manner that accounts for this difference in State practice. An analysis of the data found that when this measure was used to assess timeliness to reunifications, 13 States exhibited substantial improvements in performance, while no State exhibited a decline in performance.

Relevant issues: Although the measures are presented separately for review and comment, ACF is considering the possibility of combining some of the variables of concern into one measure. For example, the measure incorporating children in a trial home visit also could include a requirement that the child be in foster care for more than 30 days.

Permanency Composite 1—Performance Area 2: Timeliness of Reunifications for Children Entering Foster Care in a Given Fiscal Year

Justification for inclusion: Assessment of the timeliness of reunifications of children who enter foster care in a given timeframe (*i.e.*, an entry cohort) will allow ACF to capture the success of recently implemented State efforts to reunify children in a timely manner.

Possible measures: Two measures are under consideration. Neither one include an approach involving the assessment of median length of stay in foster care because it may be several years before all, or even a substantial percentage, of the children in a particular cohort will have exited foster care.

• Of all children entering foster care for the first time in the first 6 months of the reporting year, what percent exited foster care to reunification within 12 months of entry into foster care?

• Of all children entering foster care for the first time in the first 6 months of the reporting year, what percent exited foster care to reunification after having been in foster care for at least 30 days but less than 12 months?

Relevant issues: ACF believes that the assessment of timeliness to reunification of children entering foster care in a given year is an important component of assessing State performance in this domain. However, because not all children in a given entry cohort are destined to be reunified with their families, the denominator for the entry cohort measure often includes children for whom reunification is not the outcome. Because the percentage of those children will vary across States and over time, the measure must be interpreted with caution and should be used in conjunction with an assessment of timeliness to reunification of an exit cohort.

Permanency Composite 1—Performance Area 3: Permanency of Reunifications

Justification for inclusion: The permanency of reunifications may be assessed by the extent of a State's re-entries into foster care. A reunification, even if it occurs in a timely manner, cannot be considered as ''permanent'' if the child re-enters foster care within a 12-month period after the reunification. A consistent finding over the years, as reported in the *Report to Congress on Child Welfare Outcomes,* is that States with a relatively high percentage of children reunified within 12 months also tend to have a relatively high percentage of children re-entering foster care within 12 months of a prior episode, although this is not the case for all States.

Possible measure: Of all children who exit foster care to reunification (including living with a relative) in a fiscal year, what percent re-enter foster care within 12 months of the time of exit?

Relevant issues: This measure is a revision of the one used to assess foster care re-entry during the first round of the CFSR. At the time the original measure was developed, it was not feasible through AFCARS to consistently and reliably link children across years for every State. Consequently the existing re-entry measure focused on the percentage of children entering foster care who were reported to be re-entering foster care and whose re-entry occurred within 12 months of a prior episode. Because it is now possible to link children across years in AFCARS and to capture children re-entering foster care by an AFCARS identification number, the measure has been changed to one that is conceptually more meaningful.

Permanency Composite 2: Timeliness of Adoptions

Performance on Permanency Composite 2 will be a part of the determination of a State's substantial conformity with CFSR Permanency Outcome 1—Children will have permanency and stability in their living situations. The composite reflects ACF's emphasis on promoting timely adoptions for those children in foster care who cannot be reunified with their families. The composite also reflects the requirement of ASFA that States pursue TPR for children who have been in foster care for 15 of the most recent 22 months, unless the child is placed with relatives, the State agency has not provided necessary services, or there are documented compelling reasons for not seeking TPR.

The following performance areas are under consideration for Permanency Composite 2:

• Timeliness of finalized adoptions of children discharged from foster care.

• Timeliness of finalized adoptions of children who are in foster care for 17 months or more at the start of a fiscal year.

• Timeliness of finalized adoptions of children for whom a TPR has been granted.

• Timeliness of achieving TPR for children who have been in foster care for 17 months or more at the start of a fiscal year.

Although CFSR workgroup participants recommended that ACF assess timeliness to adoption using an entry cohort (*i.e.*, children who enter foster care in a particular time period), the results of our analyses indicated that an entry cohort approach to assessing the timeliness of adoptions is not feasible for the CFSR. The key results were the following:

• *An extensive timeframe was required to a cohort of children from entry into foster care to a finalized*

adoption and the timeframe is not consistent with the CFSR timeframes. For example, in following a cohort of children entering foster care in FY 2001, meaningful data pertaining to adoptions did not emerge until 3 years after the entry year.

• *Because not all children entering foster care will be adopted, and because the number of children waiting to be adopted changes each year, it is not possible to establish a stable denominator for a cohort measure.* In following the FY 2001 cohort, we found that the denominator for the measure of timeliness to adoption kept changing on an ongoing basis as children in the original cohort were reunified or exited foster care for other reasons.

Some researchers in the field using an entry cohort to assess a State's performance with regard to the timeliness of adoptions have addressed the problems noted above by employing statistical methods to estimate the ''likelihood'' of children who enter foster care in a given year being adopted within particular timeframes. ACF determined that because the CFSR is a monitoring system and not a research initiative, the use of estimates is not appropriate. A monitoring system, particularly one that has financial penalties associated with it, should be based on actual performance rather than on estimates of the likelihood of particular events occurring within a particular timeframe.

Although we have decided that an entry cohort analysis is not appropriate for Permanency Composite 2, some of the performance areas proposed for this composite involve longitudinal assessments of progress toward adoption of a group of children that may be considered a cohort (*i.e.*, all children who have been in foster care for 17 months or longer at the end of a fiscal year; or all children whose TPR occurs during a given fiscal year).

Permanency Composite 2—Performance Area 1: Timeliness of Adoptions of Children Discharged From Foster Care to a Finalized Adoption

Justification for inclusion: Exits to adoption reflect the success of a child welfare agency in achieving permanency for those children who cannot be returned to their families. A primary goal of ACF is to ensure that children who are adopted do not remain in foster care any longer than is necessary to achieve a finalized adoption. Information about the percentage of children exiting foster care to a finalized adoption who exit in a timely manner as well as about the percentage of children who are adopted, but not in a timely manner, provides a means of assessing State performance with regard to achieving this goal.

Possible measures: The following three measures are under consideration for this performance area:

• Of all children who exited foster care to a finalized adoption during the reporting period, what percent exited foster care in less than 24 months from the time of the latest removal from home? This measure was used to assess timeliness of adoption during the first CFSR round.

• Of all children who exited foster care to a finalized adoption during the reporting period, what percent was in foster care for 48 months or more before exiting to adoption?

• Of all children who exited foster care to a finalized adoption during the reporting period, what was the median length of stay in foster care (in months)?

Relevant issues: Some CFSR workgroup participants recommended that the CFSR assessment include measures that examine timeliness of adoptions for children of different age groups and different races/ethnicities. Although ACF has determined that this level of analysis is beyond the scope of the CFSR, States are encouraged to examine their own adoption data in order to understand the relationships between these factors and adoption timeliness. States vary considerably with regard to the distribution of ages and races/ethnicity among their foster care populations, and therefore the relationships between these factors and adoption timeliness also may vary.

Permanency Composite 2—Performance Area 2: Timeliness of Adoptions of Children Who Are in Foster Care for 17 Months or Longer at the Start of a Fiscal Year

Justification for inclusion: This performance area assesses progress toward adoption of a cohort of children who have been in foster care for 17 months or longer. ASFA requires State child welfare agencies to pursue adoption as a permanency goal for a child who has been in foster care for 15 of the most recent 22 months, except in limited circumstances. A 17-month rather than a 15-month timeframe was chosen for the performance area because, in accordance with ASFA, a child is considered to have ''entered foster care'' (for purposes of starting the clock for 15 of 22 months) on the earlier of:

(1) The first judicial finding that the child has been subjected to abuse and neglect, or

(2) The date that is 60 days after the date on which the child is removed from home.

The 17 months in the performance area reflects the latter timeframe for defining entry into foster care because AFCARS does not collect information pertaining to the date of the first judicial finding.

Possible measure: Of all children in foster care on the first day of a given fiscal year who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year.

Relevant issues: The proposed measure is based on the assumption that children who have been in foster care for 17 months or longer represent a somewhat stable denominator. (However, even after 17 months in foster care the denominator is not entirely stable because many children in the cohort will exit to reunification.) Although it would be preferable to include in the measure only those children in foster care for 17 months or longer who have a case goal of adoption, States do not consistently report case goal information to AFCARS and AFCARS does not have a data element pertaining to the date that a case goal is established. Also, in some States, the goal of adoption is not formally established until TPR has been achieved although adoption may be the goal that the agency is working toward.

Permanency Composite 1—Performance Area 3: Timeliness of Adoptions of Children for Whom Parental Rights Have Been Terminated

Justification for inclusion: The two timeframes that are critical to the timeliness of adoptions are (1) the timeframe between entry into foster care and TPR, and (2) the timeframe between TPR and adoption finalization. This performance area addresses the latter timeframe and reflects ACF's expectation that a finalized adoption should occur quickly after TPR is granted. An analysis of AFCARS data indicated that, nationally, from FY 1998 to FY 2003, the average time from TPR to adoption has remained consistent at about 16 months.

Possible measure: Of all children for whom a TPR was granted during a given fiscal year, what percent were adopted within 12 months of the TPR?

Relevant issues: An analysis of existing data relevant to this measure resulted in the identification of the following data issues: (1) In their submissions to the AFCARS Foster Care File, some States are reporting a substantial number of TPR dates after the reporting period in which they

actually occurred, and (2) in FY 2003, States did not provide TPR dates in their AFCARS Foster Care File submissions for over one-fifth of the children whose discharge reason was adoption. Although these data problems do not appear in the data submitted to the AFCARS Adoption File, because the AFCARS Foster Care File will be used to calculate the measure for this performance area, it is important that States are more diligent, timely, and consistent in their reporting of the AFCARS Foster Care File data elements pertaining to TPR.

Permanency Composite 2—Performance Area 4: Timeliness of TPR for Children Who Have Been in Foster Care for 17 Months or Longer at the Start of a Fiscal Year

Justification for inclusion: This performance area pertains to the timeframe required to achieve a TPR for children in foster care for 17 months or longer. The performance area is consistent with the ASFA requirement that TPR should be sought for children who have been in foster care for 15 of the most recent 22 months, except in limited circumstances.

Possible measure: Of all children in foster care for 17 months or longer on the first day of the fiscal year who did not have a TPR, what percentage of those who remained in foster care for the next 6 months had a TPR within that timeframe?

Relevant issues: National data regarding time to adoption indicates that the time span between the time of entry into foster care and the finalization of a TPR petition has decreased from FY 1998 to FY 2003 by an average of 10 months. Inclusion of this performance area in Permanency Composite 2 will permit an assessment of an individual State's performance with regard to this timeframe.

Permanency Composite 3: Placement Stability

Performance on Permanency Composite 3 will be one component of the determination of a State's substantial conformity with CFSR Permanency Outcome 1—Children will have permanency and stability in their living situations. The composite reflects the obligation of a State child welfare system to ensure that children who are removed from their homes by the State experience stable placements during their time in foster care. The following performance areas are under consideration for Permanency Composite 3:

- Stability of children's placement experience during the first year in foster care
- Stability of children's placement experience for children in care for longer than 12 months

Proposed Stability Performance Area 1: Stability of Children's Placement Experience During the First Year in Foster Care

Justification for inclusion: This performance area addresses the issue of achieving placement stability for children as quickly as possible after entry into foster care.

Possible measure: During the reporting period, of all children who have been in foster care for less than 12 months from the time of the latest removal from home, what percent have had no more than 2 placement settings?

Relevant issues: Some CFSR workgroup participants suggested that this measure does not take into account variations in time in care within the 12-month period or consider some States' practices of routinely placing children in foster care for short periods of time. To address this concern, ACF examined the data for this measure in the following ways: (1) Excluding children who had been in foster care for only 1 month, and (2) excluding children who had been in care for only 3 months. The correlations between State performance on the measure of placement stability within 12 months, and performance on this measure using the 1-month and 3-month exclusion exceeded +0.95, indicating little variation among the measures. As a result, ACF decided that the existing measure was adequate to reflect variation in State performance regarding placement stability during the first 12 months in foster care.

Permanency Composite 3—Performance Area 2: Stability of Children's Placement Experience for Children in Care for Longer Than 12 Months

Justification for inclusion: ACF believes that children should experience placement stability throughout their stay in foster care. However, analyses of the AFCARS data indicated that in most States, the percentage of children who experience no more than 2 placement settings declines considerably (in some States by half) when children have been in foster care for at least 12 months but less than 24 months, and continues to exhibit a substantial decline for those children in foster care for 24 months or longer.

Possible measure: Two measures are under consideration for this performance area.

- During the reporting period, of all children who have been in foster care for at least 12 months but less than 24 months, what percent have had no more than 2 placement settings?
- During the reporting period, of all children who have been in foster care for 24 months or longer, what percent have had no more than 2 placement settings?

Permanency Composite 4: Achieving Permanency for Children

Performance on Permanency Composite 4 will be part of the determination of a State's substantial conformity with CFSR Permanency Outcome 1—Children will have permanency and stability in their living situations. The composite reflects the responsibility of the State child welfare systems to engage in concerted efforts to find permanent homes for children so that extended stays in foster care are avoided and children do not ''age out'' of the system. The following performance areas are under consideration for Permanency Composite 4:

- The extent to which children are ''growing up'' in foster care.
- Timeliness of establishing permanency goals.
- The extent to which children with TPR exit foster care to a permanent family.

Permanency Composite 4—Performance Area 1: Children Growing Up in Foster Care

Justification for inclusion: This performance area addresses the question of State effectiveness with regard to ensuring that children do not ''languish'' in foster care—*i.e.,* entering foster care at a relatively young age and exiting foster care only when they have reached the age at which the State will not longer provide for their care.

Possible measure: Of all children who were emancipated from foster care prior to age 18 or who reached their 18th birthday while in foster care, what percent entered foster care when they were age 12 or younger and remained in foster care continuously since that entry?

Relevant issues: This measure is a modification of a measure that is part of the *Report to Congress on Child Welfare Outcomes.* The modification adds to the measure children who reached their 18th birthday while in foster care. The modification was established because Several States currently allow children to remain in foster care beyond age 18, often to complete school or college. The modification will ensure that these children are included in the measure if

they entered foster care when they were age 12 or younger even if they have not yet exited foster care.

Permanency Composite 4—Performance Area 2: Timeliness of Establishing Permanency Goals

Justification for inclusion: A key factor in moving a child toward permanency is the establishment of a permanency goal. The permanency goal is the basis for developing a case plan delineating the services to be provided and the objectives to be achieved to reach the goal. A Federal requirement is that a case plan be established for every child who is in foster care for longer than 60 days and that the case plan includes the agency's plan for achieving permanency for the child.

Possible measure: Of all children in foster care for longer than 12 months, what percentage is reported to AFCARS as ''Not Yet Determined'' with regard to the case goal?

Relevant issues: An analysis of data relevant to this measure indicated that there are a number of States that have a relatively high percentage of children for whom the data element regarding case goal is reported as ''not yet determined.''

Permanency Composite 4—Permanency Area 3: Exits to Families of Children With TPR

Justification for inclusion: This performance area is an important component of Permanency Composite 4 because it addresses the issue of whether seeking TPR for children results in children becoming ''legal orphans'' (*i.e.*, children with TPR who are not placed for adoption or guardianship or placed with relatives and eventually emancipate from foster care). TPR is a costly process, both financially and, for the child, emotionally. To engage in that process with the end result that a child does not exit foster care to a family would be contrary to the best interests of the child in most situations.

Possible measure: Of all children exiting foster care with a TPR, what percentage exited to a permanent family? (A permanent family includes living with a parent, relative, guardian, or adoptive parents.)

Relevant issues: Although in most States, the vast majority of children with TPR exit foster care to a permanent family, there are several States in which 15 to 20 percent of these children do not exit to a family. This suggests that the child welfare agency in those States may not be making sufficient efforts to ensure that children with TPR achieve permanency.

Dated: October 31, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Attachment A: Outcomes and Measures Developed for the Annual Report to Congress on Child Welfare Outcomes and the Outcomes and Items Assessed by the Child and Family Services Review

The outcomes and measures presented in the report to Congress are the following:

Child Welfare Outcome 1

Reduce Recurrence of Child Abuse and/or Neglect

Measure 1.1: Of all children who were victims of substantiated or indicated child abuse and/or neglect during the first 6 months of the reporting period, what percentage had another substantiated or indicated report within a 6-month period?

Child Welfare Outcome 2

Reduce the Incidence of Child Abuse and/or Neglect in Foster Care

Measure 2.1: Of all children who were in foster care during the reporting period, what percentage was the subject of substantiated or indicated maltreatment by a foster parent or facility staff?

Child Welfare Outcome 3

Increase Permanency for Children in Foster Care

Measure 3.1: For all children who exited foster care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.2: For children who exited foster care and were identified as having a diagnosed disability, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.3: For children who exited foster care and were older than age 12 at the time of their most recent entry into care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.4: Of all children exiting foster care to emancipation, what percentage was age 12 or younger at the time of entry into care?

Measure 3.5: For all children who exited foster care, what percentage by racial/ethnic category left either to reunification, adoption, or legal guardianship?

Child Welfare Outcome 4

Reduce Time in Foster Care to Reunification Without Increasing Re-entry

Measure 4.1: Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, what percentage was reunified in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Measure 4.2: Of all children who entered foster care during the reporting period, what percentage re-entered care:

(1) Within 12 months of a prior foster care episode?

(2) More than 12 months after a prior foster care episode?

Child Welfare Outcome 5

Reduce Time in Foster Care to Adoption

Measure 5.1: Of all children who exited foster care to a finalized adoption, what percentage exited care in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Child Welfare Outcome 6

Increase Placement Stability

Measure 6.1: Of all children served who had been in foster care for the time periods listed below, what percentage had no more than two placement settings during that time period?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Child Welfare Outcome 7

Reduce Placements of Young Children in Group Homes or Institutions

Measure 7.1: For all children who entered foster care during the reporting period and were age 12 or younger at the time of their most recent placement, what percentage was placed in a group home or an institution?

The outcomes and systemic factors assessed through the Child and Family Services Review are the following:

Child and Family Outcomes

Safety Outcome 1: Children are, first and foremost, protected from abuse and neglect.

Safety Outcome 2: Children are safely maintained in their homes whenever possible and appropriate.

Permanency Outcome 1: Children have permanency and stability in their living situations.

Permanency Outcome 2: The continuity of family relationships and connections is preserved for children.

Child and Family Well-being Outcome 1: Families have enhanced capacity to provide for their children's needs.

Child and Family Well-being Outcome 2: Children receive appropriate services to meet their educational needs.

Child and Family Well-being Outcome 3: Children receive adequate services to meet their physical and mental health needs.

Systemic Factors

Statewide Information System

Case Review System

Quality Assurance System

Training (for child welfare agency staff and foster and adoptive parents)

Service Array

Agency Responsiveness to the Community

Foster and Adoptive Parent Licensing, Recruitment, and Retention

Attachment B: Comparison of CFSR Measures Used in Round 1, and Proposed CFSR Data Composites for the Next Round

CFSR SAFETY OUTCOME 1

Current CFSR data measures and standard associated with CFSR Safety Outcome 1	Proposed composite to be associated with CFSR Safety Outcome 1
Recurrence of maltreatment: Measure and national standard: Of all children who were victims of a substantiated or indicated child maltreatment report during the first 6 months, 6.1 percent of fewer were victims of another substantiated or indicated report within a 6-month period.	Safety Composite 1: Recurrence of maltreatment. A national standard will be established from the data composite scores resulting from States' performance on the areas incorporated in the composite. Some possible performance areas to be included in the composite are: • Performance area 1: Recurrence of substantiated or indicated maltreatment reports. • Performance area 2: Multiple unsubstantiated maltreatment reports. • Performance area 3: Timeliness of initiating investigations of child maltreatment reports. • Performance area 4: Timeliness of disposition of child maltreatment reports.
Maltreatment of children in foster care: Measure and national standard—Of all children in foster care during the reporting year, 0.57 percent or less were the subject of a substantiated or indicated maltreatment by a foster parent or facility staff member.	See safety composite 2. (No data composite for maltreatment in foster care is proposed for Safety Outcome 1. Instead, for the next CFSR round, State data pertaining to maltreatment of children in foster care will be addressed under CFSR Safety Outcome 2.)

CFSR SAFETY OUTCOME 2

Current CFSR data measures and standard associated with CFSR Safety Outcome 2	Proposed composite to be associated with CFSR Safety Outcome 2
No data measure or national standard was associated with this Safety Outcome in the first CFSR round.	Safety Composite 2: Maltreatment of children in foster care. The national standard will be established from the composite scores derived from States' performance on the areas included in the composite. Some possible performance areas for inclusion are the following: • Performance area 1: Maltreatment of children in foster care by a foster parent or facility staff member. • Performance area 2: Maltreatment of children in foster care by their parents.

CFSR PERMANENCY OUTCOME 1

Current CFSR data measures and standards associated with CFSR Permanency Outcome 1	Proposed composites to be associated with Permanency Outcome 1
Timeliness of reunification measure and national standard: of all children exiting foster care to reunification, 76.2 percent or more exited within 12 months of entry into foster care. Re-entry into foster care measure and national standard: of all children entering foster care, 8.6 percent or less were re-entering within 12 months of a prior episode.	Permanency Composite 1: Timeliness and permanency of reunification. A national standard will be established from the data composite scores resulting from States' performance on the areas incorporated in the composite. Some possible performance areas to be included in the composite are: • Performance area 1: Timeliness of reunifications of children exiting foster care in a given fiscal year. • Performance area 2: Timeliness of reunifications of children entering foster care in a given fiscal year. • Performance area 3: Permanency of reunifications.

CFSR PERMANENCY OUTCOME 1—Continued

Current CFSR data measures and standards associated with CFSR Permanency Outcome 1	Proposed composites to be associated with Permanency Outcome 1
Timeliness of adoption measure and national standard: of all children exiting foster care to a finalized adoption, 32.0 percent or more achieved a finalized adoption within 24 months of the time of entry into foster care.	Permanency Composite 2: Timeliness of adoption. A national standard will be established from the data composite scores resulting from States' performance on the areas incorporated in the composite. Some possible performance areas to be included in the composite are: • Performance area 1: Timeliness of adoptions of children discharged from foster care to a finalized adoption. • Performance area 2: Timeliness of adoptions of children who are in foster care for 17 months or longer at the start of a fiscal year. • Performance area 3: Timeliness of adoptions of children for whom parental rights had been terminated. • Performance area 4: Timeliness of achieving termination of parental rights for children who have been in foster care for 17 months or more at the start of a fiscal year.
Placement stability measure and national standard: of all children in foster care who have been in care for less than 12 months, 86.7 percent or more had no more than 2 placement settings.	Permanency Composite 3: Placement stability. A national standard will be established from the data composite scores resulting from States' performance on the area incorporated in the composite. Some possible performance areas to be included in the composite are: • Performance area 1: Stability of children's placement experience during the first year in foster care. • Performance area 2: Stability of children's placement experience for children in foster care for longer than 12 months.
No national standard measure. Information captured in the case review instrument.	Permanency Composite 4: Achieving Permanency for Children in Foster Care. A national standard will be established from the data composite scores resulting from States' performance on the areas incorporated in the composite. Some possible performance areas to be included in the composite are: • Performance area 1: The extent to which children are growing up in foster care. • Performance area 2: Timeliness of establishing permanency goals. • Performance area 3: The extent to which children with TPR exit foster care to a permanent family.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005G–0367]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner.'' This guidance document has been developed as a special control guidance document to support the classification of the low energy ultrasound wound cleaner into class II (special controls). The device is intended for the cleaning and maintenance debridement of wounds. This guidance document describes a means by which the low energy ultrasound wound cleaner may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the low energy ultrasound wound cleaner into class II (special controls). The guidance document is immediately in effect as the special control for the low energy ultrasound wound cleaner, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: David B. Berkowitz, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 152.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance document ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner'' has been developed as a

special control guidance document to support the classification of the low energy ultrasound wound cleaner into class II (special controls). This device is intended for the cleaning and maintenance debridement of wounds. On April 29, 2004, Celleration, Inc., submitted a petition requesting classification of the Celleration MIST Therapy System™ under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)).

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the low energy ultrasound wound cleaner into class II (special controls) under section 513(f)(2) of the act. This guidance document will serve as the special control for the low energy ultrasound wound cleaner device. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation in § 10.115. The guidance represents the agency's current thinking on the low energy ultrasound wound cleaner for the cleaning and maintenance debridement of wounds. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Low Energy Ultrasound Wound Cleaner'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1302 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

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

Dated: October 5, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–22069 Filed 11–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 05–013N]

Meeting To Discuss Possible Changes to the Regulatory Jurisdiction of Certain Food Products Containing Meat and Poultry

AGENCIES: Food and Drug Administration, HHS; Food Safety Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA), in the Department of Health and Human Services, and the Food Safety Inspection Service (FSIS), in the United States Department of Agriculture (USDA), are jointly announcing a public meeting to discuss and solicit information on an approach for providing consistency and predictability with respect to which of the two agencies should have jurisdiction over certain types of food products that contain meat and poultry as ingredients, as well as the opening of a joint agency docket to receive written comments. This notice outlines that approach and solicits comments on it and on the specific questions asked in section II below.

DATES: The public meeting will be held on December 15, 2005, from 10 a.m. to 4 p.m.

ADDRESSES: The public meeting will be held at the Donald E. Stephens Convention Center, 5555 North River Road, Rosemont, IL 60018, 847–692–0222.

You may submit comments, identified with Docket No. 05–013N, by any of the following methods:

- Electronic mail:

FSIS: FSIS *regulationsComments@fsis.usda.gov*. Follow the instructions for submitting comments on the Agency's Web site.

• FAX:
FSIS: 202–690–0486.
• Mail/Hand delivery/Courier (For paper, disk, or CD–ROM submissions):
FSIS: Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250
FDA: Division of Dockets Management, 5630 Fishers Lane, Room 1061, Rockville, MD 20852.
Instructions: All submissions received must include Docket No. 05–013N. All comments received will be posted without change to: (FSIS) *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp.;* (FDA) *http://www.fda.gov/dockets/ecomments.*
Submissions received must include the Agency name and Docket No. 05–013N. All comments submitted will be available for public inspection in the Agencies' Docket Offices and on the Agencies' Web sites.

FOR FURTHER INFORMATION CONTACT: For general questions about the meeting contact Marion V. Allen, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1584, FAX: 301–436–2605, e-mail: *marion.allen@fda.hhs.gov.*
Please see Section III. Registration, for information on how to register for the Public Meeting.
For technical questions about the subject of the meeting: FDA: Karen Carson, Director, Executive Operations Staff (EOS), Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1664, FAX: 301–436–2668, e-mail: *kcarson@cfsan.fda.gov.*
FSIS: Philip S. Derfler, Assistant Administrator, Office of Policy, Program, and Employee Development (OPPED), Food Safety Inspection Service, 1400 Independence Ave., SW., Suite 350–E Whitten Building, Washington, DC 20250, (202) 720–2709, FAX: (202) 720–2025, e-mail: *Philip.Derfler@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION

I. Background

Both FSIS and FDA have regulatory authority over the food supply. Under the Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), and Egg Products Inspection Act (EPIA), FSIS has authority over all meat and poultry products and processed egg products. Under the Federal Food, Drug, and Cosmetic Act (FFDCA), FDA has authority over all foods not under FSIS' jurisdiction (e.g., dairy, bread and other grain products, vegetables and other produce, and other products such as seafood).

Over the years, FSIS has made jurisdictional decisions based on various factors, including the amount of meat or poultry in the product; whether the product is represented as a meat or poultry product (that is, whether a term that refers to meat or poultry is used on labeling); and whether the product is perceived by consumers as a product of the meat or poultry industries. With regard to the consumer perception factor, FSIS has made decisions on a case-by-case basis, mostly in response to situations involving compliance and enforcement. Although this case-by-case approach resulted in decisions that made sense at the time, a recent review by the agencies highlighted that some decisions do not appear to be fully consistent with other product decisions and that the reasoning behind various determinations were not fully articulated. For example, the reasoning for deciding that a ''bagel dog'' (a product composed of a hotdog wrapped in bagel dough which is then baked) was not a meat product was conveyed in a letter from FSIS to a trade association in 1979 (Letter from Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, to Pacific Coast Meat Association, January 8, 1979). The letter stated that the product was viewed as a ''closed-face'' sandwich and, thus, was not under FSIS jurisdiction. However, the Agency did not explain why such products were viewed as closed-face sandwiches or the importance of this view. Moreover, the letter did not explain why bagel dogs were different than other products that were similarly configured, e.g., ''corn dogs'' and ''sausage turnovers,'' that were, and continue to be, manufactured under FSIS jurisdiction.

Confusion persists about the reasoning used with respect to various decisions about which agency has jurisdiction over certain food products containing meat and poultry. For example, manufacturers have wanted to change the original formulations of products that were the subject of jurisdictional decisions, e.g., bagel dogs and pepperoni rolls.[1] By adding new ingredients, e.g., adding cheese and other meat and poultry ingredients, manufacturers have created ''bagel dogs with cheese'' and ''pepperoni, ham, and cheese rolls.'' Although the manufacturers requested that FSIS categorize these new products like their predecessors, FSIS has denied these kinds of requests because, without a clear rationale supporting the original decisions, FSIS believed that confusion would be compounded further by perpetuating the rationale contained in the original decision.

In other situations, manufacturers have expressed confusion about the classification of new versions of traditional food products because products with similar composition are produced under the jurisdiction of a different agency. For example, FSIS decided decades ago that closed-face sandwiches made with meat ingredients were not meat products and, thus, were products under FDA's regulatory jurisdiction. Recently, manufacturers of ''wrap-type sandwiches with meat'' have argued that wraps are similar enough to closed-face sandwiches such that wraps should fall under FDA's jurisdiction. There are wrap-like products, (meat burritos, meat egg rolls, and meat tamales), which FSIS has categorized as meat products and which are more similar in composition to the wrap-sandwich. Because wrap-type sandwiches are new to the market and the historic decision about closed-face sandwiches did not include them, FSIS concluded that wrap-type sandwiches are meat products.

These and other circumstances led FSIS and FDA to conduct an in-depth examination of the historic decisions about regulatory jurisdiction made by FSIS. An FSIS–FDA working group met to explore the issue and to develop an approach for making sound, clear, and transparent decisions about product categorization and agency jurisdiction.

As a result of the working group's findings, the agencies concluded that a clearer approach to determining jurisdiction is possible. This approach involves considering the contribution of the meat or poultry ingredients to the identity of the food. In some cases, the meat or poultry ingredients are distinctive and significantly contribute to a food's basic nature by characterizing the food. In other cases, the meat or poultry ingredients are used in such a way that they do not contribute to the product's basic nature because they are not easily distinguished and are used to simply add flavor. The agencies recognized, however, that application of this approach could lead to changes in jurisdiction for certain foods and categories of foods and thus felt that it was important to present this approach

[1] Pepperoni rolls are a product that was the subject of a FSIS jurisdictional decision in 1986. They are a product that is composed of pieces of pepperoni that are distributed in bread dough which is then baked.

for public comment before taking steps to implement any changes.

A change in jurisdiction may be in order for the products and product categories described below. Bagel dogs, closed-face meat and poultry-containing sandwiches, and natural casings, regulation of which would move from FDA to FSIS jurisdiction, are products or product categories characterized by the meat or poultry ingredients that they contain. Further, these products are identified by terms that refer to the meat and poultry ingredients, reflecting the contribution of the meat and poultry components. In contrast, meat and poultry components are added to other products/product categories, such as bread/rolls/buns, cheese products, flavors, pizzas, and salad dressings, to add flavor but not to alter the character of the products. Such products would move from FSIS to FDA jurisdiction.

Bagel Dogs

Bagel dogs were the subject of a jurisdiction decision that FSIS made almost 20 years ago. The decision made at that time was that a product composed of a cooked hotdog wrapped in bagel dough, which is baked, is not itself a meat product. Bagel dogs thus fell under FDA jurisdiction. Bagel dogs, however, are similar to other meat-filled, dough-encased or wrapped products—such as corn dogs and sausage turnovers—which have historically been under FSIS jurisdiction. These products are composed of a meat or poultry filling that is encased or wrapped in dough or crust which provides a convenient container for the ingredients for hand-held eating. The meat and poultry components characterize the products and the characteristics of the meat/poultry ingredients are not changed by the bread, dough, or crust around it. Because the agencies have not been able to distinguish bagel dogs from corn dogs and similar products, the agencies are considering changing the jurisdiction of bagel dogs from FDA to FSIS.

Natural Casings

At least as far back as the 1950's, USDA made a jurisdictional decision that natural casings, which are used for sausages and other stuffed and formed meat and poultry products, are not meat byproducts because they serve as a container or packaging for the meat or poultry put in the casing. As a result, natural casings have been under FDA jurisdiction. But natural casings originate from meat byproducts, (specifically, from parts of livestock digestive tracts) which are under FSIS jurisdiction. The process of sanitizing and sizing the livestock materials does not change them to the degree that their basic identity as meat byproducts such as bungs, stomachs, intestines is changed. Therefore, the agencies are considering changing the jurisdiction of this category of products from FDA to FSIS.

Closed-Face Sandwiches Made With Meat or Poultry

According to FSIS policy going back to the 1930's, closed-face sandwiches (products containing at least 35% cooked meat and poultry products, by weight, placed between 2 slices of bread, biscuit, or bun, which are less than 50 percent of the weight of the product) were not meat or poultry products because consumers viewed them as products primarily prepared in local food service establishments (FSIS Food Standards and Labeling Policy Book, 2003). Today, however, sandwiches containing meat or poultry components in their majority are made in manufacturing facilities and are shipped in interstate commerce. Moreover, in determining regulatory jurisdiction, it makes sense to consider the contribution of the meat ingredient to the product.

Meat and poultry sandwiches are generally consumed for the distinctive meat and poultry ingredients, not for the bread that surrounds them. In other words, it is the meat or poultry ingredients that characterize the sandwich, which is not changed by the bread, biscuit, or bun between which they are placed. Furthermore, sandwiches are similar to the other meat- or poultry-filled, dough-encased or wrapped products that were discussed earlier have historically been under FSIS jurisdiction. Therefore, the agencies are considering changing the jurisdiction of these products from FDA to FSIS.

Cheese and Cheese Products (Including Cheese Dips) Made With Less Than 50 Percent Meat or Poultry

Products that meet the standards of identity in 21 CFR Part 133 for Cheeses and Cheese Products (i.e., pasteurized blended cheese, process cheese, cheese food, cheese spread) are not considered meat or poultry products. The standard of identity for such products allows for optional ingredients, including meat ingredients. Based on this standard, FSIS decided many years ago that some cheese products such as cheese balls and cheese logs that include small pieces of inspected and passed ready-to-eat meat (e.g., dried sausage or cooked bacon) at less than 50 percent of their formulation (by weight) were not meat products and should fall under FDA jurisdiction. However, this FSIS decision has never been extended to all cheese and cheese products or to those that contain poultry. The agencies have considered this decision and, as a result, the agencies are suggesting that the addition of less than 50 percent inspected and passed ready-to-eat meat or poultry ingredients does not change the characteristics of cheese or cheese products (whether or not the product is covered by an FDA standard of identity) because, at less than 50 percent of the weight of the product, the meat or poultry added is used for flavoring effect. Therefore, the agencies are considering changing the jurisdiction of these products from FSIS to FDA.

Bread, Rolls, and Buns Made With Less Than 50 Percent Meat or Poultry

The jurisdiction of pepperoni rolls is an example of a bread-based product that has caused confusion since a decision was made in 1986 by FSIS that such a product is not a meat product, and is, therefore, under FDA's jurisdiction (Letter from Margaret O. Glavin to State of West Virginia, Department of Agriculture, January 8, 1986). The original decision was made for a product that was composed of small pieces of pepperoni that were dispersed throughout bread dough and baked. At the time, the product was prepared in such a way that it was viewed by FSIS as being a product of the bakery industry. More recently, FSIS has viewed products with variations of the original formulation (e.g., pepperoni, ham, and cheese rolls) as meat and poultry products because these products are not consistent with the formulation of the product for which the original jurisdictional decision was made.

In reviewing the decision about pepperoni rolls and the other decisions made about bread-based products over the years, the agencies considered the standards of identity for bakery products in 21 CFR Part 136, Bakery Products. Such products, which include bread, rolls, and buns, are foods produced by baking dough made from farinaceous ingredients into which optional ingredients may be dispersed for flavor. Meat and poultry are not permitted optional ingredients in the standards for breads, rolls, and buns in Part 136. Therefore, these foods to which meat or poultry are added are non-standardized foods. The agencies believe that meat and poultry ingredients can be added to any bakery product for flavoring.

The agencies are now considering changing the jurisdiction from FSIS to

FDA of the original pepperoni roll products, as well as those foods with variations of this original formulation. Such products would be prepared with less than 50 percent inspected and passed ready-to-eat meat or poultry, dispersed throughout the dough for a flavoring effect. (As a general matter, most products containing meat or poultry are composed of well below or well above 50 percent meat or poultry by weight.)

Dried Poultry Soup Mixes

Dried meat soup mixes, regardless of the amount of meat they contain, are currently under FDA jurisdiction based on a FSIS decision made decades ago, which is reflected in the FSIS Food Standards and Labeling Policy Book (2003). Dried poultry soup mixes, however, have historically been considered to be poultry products (FSIS Food Standards and Labeling Policy Book). This has been a point of disparity and confusion. Based on FSIS' experience in reviewing product formulations, dried soup mixes with meat or poultry are composed of less than 50 percent inspected and passed dried/powdered meat/poultry (by weight). The meat and poultry components used to prepare these products are not in a form that is recognized as ''meat'' or ''poultry'' and are used at low levels for seasoning or flavoring effects. For this reason and for the sake of parity, the agencies are considering changing the jurisdiction of dried poultry soup mixes from FSIS to FDA.

Flavor Bases/Flavors

Flavor bases and reaction/process flavors are produced by rigorous heating (e.g., 100 °C or higher) and by chemical processes (e.g., hydrolysis/enzymolysis). Such products that are prepared with inspected and passed meat or poultry ingredients are in a powder, slurry, or paste form. They are used in other products for a flavoring effect, not for their contribution to the meat or poultry content of the food products. Furthermore, such products are typically sold for use within the food industry, not for use by household consumers. Therefore, the agencies are considering changing the jurisdiction of this category of products from FSIS to FDA.

Pizzas With Meat or Poultry

In 2003, FSIS eliminated the standard of identity for traditional pizzas with meat or poultry (68 FR 44859, July 31, 2003). Thus, traditional pizzas composed of sauce, cheese, and inspected and passed meat or poultry toppings on a layered crust need only contain 2 percent meat or poultry by weight to be under FSIS jurisdiction. However, the base onto which toppings are placed represents the majority of the product, and meat or poultry ingredients may be among any number of toppings used for flavoring purposes. While the meat or poultry toppings provide flavoring to the finished food, they do not change the character of the food. Because non-meat/poultry pizzas have always been under FDA's jurisdiction, and the meat or poultry ingredients are generally used to provide flavor, the agencies are considering changing the jurisdiction of these products from FSIS to FDA.

Salad Dressings Made With Less Than 50 Percent Meat or Poultry

Over the years, FSIS has made jurisdictional decisions that salad dressing products made with cooked meat ingredients (e.g., cooked bacon) are not meat products. The basis for the decisions was that such products were consistent with the standards of identity for ''dressings'' in 21 CFR Part 169, Food Dressings and Flavorings. Although the standards do not list meat ingredients as optional ingredients, the meat ingredients were not considered to characterize the dressings as meat products, nor were they considered to characterize non-standardized dressings, such as vinaigrettes. As optional ingredients, the meat or poultry ingredients are intended to provide flavor and do not contribute to the characterization of the products as salad dressings. There has, however, been occasional confusion regarding under which agency would regulate the product. The agencies therefore are contemplating making clear that salad dressings that contain less than 50 percent inspected and passed, ready-to-eat meat or poultry ingredients by weight (e.g., cooked bacon), are not meat or poultry products and are under FDA jurisdiction.

The agencies recognize that these jurisdictional changes would affect firms and establishments, as well as the agencies themselves. It is unlikely that, in most cases, affected firms or establishments would have to overhaul production facilities or processing operations, significantly alter marketing approaches, or change product formulations to take actions to meet the regulatory requirements of one or the other agency. It is likely, however, that with the suggested changes in jurisdiction, there will be additional administrative, inspection, and labeling requirements. For example, firms moving to FSIS jurisdiction would need to: receive grants of inspection; develop and implement hazard analysis and critical control point (HACCP) plans, sanitation standard operating procedures (SSOPs), and pathogen control and other laboratory testing procedures; develop and implement systems of recordkeeping; and obtain product label approvals.

II. Public Meeting

FSIS and FDA are holding this public meeting in order to gain public input on the ideas set out in this notice and on the impact of the changes discussed herein. In order to benefit from this public meeting, the agencies are seeking input on a number of questions, including:

- Is the approach that is suggested by the agencies a reasonable one? If not, why not?
- Are there other food products or product categories that have been the subject of historical regulatory jurisdictional decisions by FSIS, which were based on a consumer perception factor, that should be considered by the agencies?
- How many firms or establishments would be affected for each product and product category? What is the volume of production for each product or product category?
- Would there be modifications in equipment, facility design, labeling, recordkeeping, or processing and reporting responsibilities that are needed in order for current operations to continue making the products that are the subject of the suggested changes, and what are they?
- What would the administrative, operational, marketing, and labeling costs be associated with changes in product jurisdiction?
- What would be a reasonable process and time frame within which to implement any changes in jurisdiction?
- What would be consumers' views of the subject products under the suggested approach? More particularly, what effect would changing regulatory jurisdiction have on consumers' perceptions of the subject products? For example, what would consumers' reaction be to the fact that dried chicken soup mix is regulated by FDA?
- What effects would there be, if any, on the way the subject products are marketed?

The agencies seek as much information as possible about the impact of any changes in jurisdiction.

III. Registration

Please submit your registration information (including name, title, firm name, address, telephone number, e-

mail address, and fax number) at least 5 workdays before the public meeting date. We encourage you to register online at *http://www.cfsan.fda.gov/-comm/register.html.* or to fax your registration directly to Marion V. Allen at 301–436–2605. We will accept registrations onsite. Space is limited and registration will be closed when maximum seating capacity is reached (250 people). If you need special accommodations due to a disability, please notify Marion V. Allen at least 7 workdays in advance.

We encourage individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record. If you would like to make oral comments at the meeting, please specify your interest in speaking when you register. The amount of time for each oral presentation will be limited to 5 minutes.

IV. Transcripts

A transcript will be made of the proceedings of the meeting. You may request a copy of the meeting transcript in writing approximately 30 working days after the public meeting at a cost of 10 cents per page from:

FDA: FDA's Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857; or

FSIS: FSIS, Freedom of Information Office, USDA, 1400 Independence Ave., SW., Room 1140 South Building, Washington, DC 20250.

The transcript of the public meeting and all comments submitted will be available for public examination at the Agencies' Docket Offices (see **ADDRESSES** for locations and hours).

V. Comments

In addition to presenting oral comments at the public meeting, interested persons may submit written or electronic comments on the subject of this meeting and **Federal Register** notice to a joint agency docket housed at FSIS.

FSIS: Submit comments by any of the following methods: Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items.

Comments are to be identified by the Docket No. 05–013N. All comments submitted in response to this notice will be available for public inspection in the Agencies' Docket offices and web sites. [See **ADDRESSES** section for location and hours].

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/index.asp.*

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

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

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

Done in Washington DC on: November 2, 2005.

Jeffrey E. Shuren,

Assistant Commissioner for Policy, Food and Drug Administration.

Sean Altekruse,

Deputy Executive Associate Administrator, OPPED, Food Safety Inspection Service.

[FR Doc. 05–22123 Filed 11–3–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Women's Health Initiative Observational Study

Summary: 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, Office of the Director, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Women's Health Initiative (WHI) Observational Study. *Type of Information Collection Request:* Revision OMB #0925–0414 Exp: 04/06. *Need for Use of Information Collection:* This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. Continuation of follow-up years for ascertainment of medical history update forms will provide essential data for outcomes assessment for this population of aging women. *Frequency of Response:* On occasion. *Affected Public:* Individuals and physicians. *Type of Respondents:* Women, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
OS Participants	85,786	1	.21	18,195

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Next-of-kin	1,483	1	.0835	124
Physician's Office Staff	4	1	.0835	.33
Total	87,273			18,319

The annualized cost burden to respondents is $290,230. There are no annual Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection is necessary for the proper performance of the function 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, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Linda Pottern, Project Officer, Women's Health Initiative Program Office, National Institutes of Health, 6701 Rockledge Drive, 2 Rockledge Centre, Suite 8204, MSC 7935, Bethesda, MD 20892–7935, or call 301–402–2900 or E-mail your request, including your address to: *potternl@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 28, 2005.

Jacques Rossouw,

NHLBI, WHI Project Officer, National Institutes of Health.

[FR Doc. 05–22078 Filed 11–4–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, SEP (ZHG1 HGR N J1).

Date: November 10, 2005.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Design and Analysis RFA.

Date: December 5–6, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22076 Filed 11–04–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: December 1, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affiars, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878; 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 31, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22072 Filed 11–4–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public a indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute On Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: November 28–30, 2005.

Time: 2 p.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, PhD, Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 31, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22073 Filed 11–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel, 06–30, Review R03 & K's.

Date: November 10, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Soheyla Saadi, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr. Rm 4AN32A, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4805, *saadisoh@nidcr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel, 06–22, Review R13.

Date: December 5, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Crainofacial Res., 45 Center Drive. Bethesda, MD 20892–6402, (301) 594–4809, *Mary_Kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22074 Filed 11–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Mentored Research Scientist Development Award (K01) Application Review.

Date: November 21, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38oz@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Obesity Nutrition Research Centers.

Date: November 29–30, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel, Gene Therapy for Pain.

Date: December 21, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22075 Filed 11–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: NSAA.

Date: November 17, 2005.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrant@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: NSCF.

Date: November 17, 2005.

Time: 4 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrant@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ICI Member Conflict.

Date: November 18, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinbem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Molecular Genetics.

Date: November 18, 2005.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, (301) 435–0903, *millsm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of R21 and R15 Structure-Function Applications.

Date: November 21, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Sciences BRP.

Date: November 21, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomolecular Recognition and Assembly Program Project.

Date: November 22, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Antibody Tolerance and SLE.

Date: November 22, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jim Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, (301) 435–1187, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Tumor Vaccine.

Date: November 22, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Imaging Technology.

Date: November 22, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Coagulation Factor and Anticoagulant.

Date: November 22, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Surgical Tools.

Date: November 22, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rocklege Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Delivery Systems and Nanotechnology.

Date: November 28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda Metro Center, 7400 Wisconsin Ave., Executive Board Room, Bethesda, MD 20814.

Contact Person: Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7849, Bethesda, MD 20892, (301) 435–2810, *zullost@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ACE Member Conflict.

Date: November 28, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7862, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Receptors and Transporters.

Date: November 28, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Behavioral Sciences.

Date: November 29, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 435–2211, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Acetylcholine Receptors and Synapses.

Date: November 29, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Community Participation in Research.

Date: November 29–December 1, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro Genetics.

Date: November 30, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hamilton Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC 20005.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urology and Renal Development.

Date: November 30, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Vaccine Member Conflict.

Date: November 30, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular and Sleep Epidemiology (CASE) Member Conflict Study Section.

Date: November 30, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 435–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership Special Emphasis Panel.

Date: November 30, 2005.

Time: 2 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Ion Channels.

Date: November 30, 2005.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biological Chemistry and Biophysics Special Review.

Date: November 30, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonja@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22077 Filed 11–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision of section 6, and a metes-and-bounds survey in section 6, in T. 9 S., R. 19 E., Boise Meridian, Idaho, was accepted September 15, 2005.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 28, and the metes-and-bounds survey of lot 1, section 28, in T. 19 N., R. 21 E., Boise Meridian, Idaho, was accepted October 3, 2005.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 8 and 17, in T. 23 N., R. 22 E., Boise Meridian, Idaho, was accepted October 3, 2005.

The plat representing the dependent resurvey of portions of the Sixth Auxiliary Meridian East (west boundary), and the subdivisional lines, and the subdivision of sections 7, 8, 18, 19, 20, and 21, in T. 15 N., R. 26 E., Boise Meridian, Idaho, was accepted October 4, 2005.

The plat representing the dependent resurvey of portions of the east boundary, the subdivisional lines, and the subdivision of section 25, and the metes-and-bounds survey of lots 4 and 6 in section 25, in T. 16 N., R. 20 E., Boise Meridian, Idaho, was accepted October 4, 2005.

The plat representing the corrective dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the subdivision of section 32, and the dependent resurvey of a portion of the subdivisional lines, in T. 11 S., R. 27 E., Boise Meridian, Idaho, was accepted October 26, 2005.

These surveys were executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of portions of the west boundary, the subdivisional lines and the subdivision of sections 9, 16, 19, 31, and 32, and the additional subdivision of sections 9, 16, 19, 31, and 32, in T. 34 N., R. 1 W., Boise Meridian, Idaho, was accepted October 6, 2005.

The plat representing the dependent resurvey of portions of the south boundary, the subdivisional lines, and the subdivision of sections 24, 25, 26, 27, 33, and 34, and the additional subdivision of sections 24, 25, 26, 27, 33, and 34, and the surveys of lot 33 in section 26, and lots 33, 34, and 35 in section 33, in T. 34 N., R. 2 W., Boise Meridian, Idaho, was accepted October 6, 2005.

This survey was executed at the request of the Bureau of Reclamation to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and a portion of certain tracts and a metes-and-bounds survey in section 9, in T. 9 S., R. 21 E., Boise Meridian, Idaho, was accepted September 12, 2005.

Summary: The Bureau of Land Management (BLM) will file the plats of surveys of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

The plat representing the dependent resurvey of portions of the subdivisional lines, and 1880 original meanders of Lower Twin Lake, and the survey of the 2004–2005 meanders of Lower Twin Lake, in T. 52 N., R. 4 W., Boise Meridian, Idaho, was accepted October 31, 2005.

The plat representing the dependent resurvey of portions of the south boundary, Guide Meridian (west boundary), subdivisional lines, and the 1880 original meanders of Spirit and Lower Twin Lakes, and the survey of the 2004–05 meanders of Spirit and Lower Twin Lakes, in T. 53 N., R. 4 W., Boise Meridian, Idaho, was accepted October 31, 2005.

Dated: October 31, 2005.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 05–22090 Filed 11–4–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of Restricted Joint Bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2005, through April 30, 2006. The List of Restricted Joint Bidders published in the **Federal Register** May 3, 2005, covered the period May 1, 2005, through October 31, 2005.

Group I. Exxon Mobil Corporation. ExxonMobil Exploration Company.

Group II. Shell Oil Company. Shell Offshore Inc. SWEPI LP. Shell Frontier Oil & Gas Inc. Shell Consolidated Energy Resources Inc. Shell Land & Energy Company. Shell Onshore Ventures Inc. Shell Offshore Properties and Capital II, Inc. Shell Rocky Mountain Production LLC. Shell Gulf of Mexico Inc.

Group III. BP America Production Company. BP Exploration & Production Inc. BP Exploration (Alaska) Inc.

Group IV. TOTAL E&P USA, Inc.

Group V. Chevron Texaco Corporation. Chevron U.S.A. Inc. Texaco Inc. Texaco Exploration and Production Inc.

Group VI. ConocoPhillips Company.
Group VII. Eni Petroleum Co. Inc. Eni Petroleum Exploration Co. Inc. Eni Deepwater LLC. Eni Oil USA LLC.
Group VIII. Petrobras America Inc.

Dated: October 6, 2005.

R. M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 05–22125 Filed 11–4–05; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–2104–19]

U.S.-Oman Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

DATES: Effective Date: October 28, 2005.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on October 19, 2005, the Commission instituted investigation No. TA–2104–19, *U.S.-Oman Free Trade Agreement: Potential Economywide and Selected Sectoral Effects,* under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)), for the purpose of assessing the likely impact of the U.S. Free Trade Agreement with Oman on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

FOR FURTHER INFORMATION CONTACT: Project Leaders, Robert Wallace, Office of Industries (202–205–3458; *robert.wallace@usitc.gov*), or Nannette Christ, Office of Economics (202–205–3263; *nannette.christ@usitc.gov*). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*).

Background: As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)–(3) of the Trade Act of 2002 assessing the likely impact of the U.S. Free Trade Agreement with Oman on the U.S. economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of U.S. consumers.

In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature concerning any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. On October 17, 2005, the President notified the Congress of his intent to enter into an FTA with Oman. The USTR requested that the Commission provide the report by February 3, 2006.

Public Hearing: A public hearing in connection with the investigation is scheduled to begin at 9:30 a.m. on December 7, 2005, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., November 28, 2005. Any prehearing briefs (original and 14 copies) should be filed no later than 5:15 p.m., December 1, 2005; the deadline for filing post-hearing briefs or statements is 5:15 p.m., December 15, 2005. In the event that, as of the close of business on November 28, 2005, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after November 28, 2005, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m., December 15, 2005. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf).* Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission sends to the President and the Congress and makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS)

http://edis.usitc.gov. Hearing impaired individuals may 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.

Issued: November 1, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commision.

[FR Doc. 05–22153 Filed 11–4–05; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 6, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Report of Officials.

OMB Number: 3133–0053.

Form Number: NCUA 4501.

Type of Review: Revision to a currently approved collection.

Description: 12 U.S.C. 1761—This statutory provision requires that a record of the names and addresses of the executive officers, members of the supervisory committee, credit committee, and loan officers shall be filed with the administration within 10 days of their election/appointment.

Respondents: Credit unions.

Estimated No. of Respondents/ Recordkeepers: 8,871.

Estimated Burden Hours per Response: 1 hour.

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 8,871 hours.

Estimated Total Annual Cost: 0.

By the National Credit Union Administration Board on November 1, 2005.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–22100 Filed 11–4–05; 8:45 am]

BILLING CODE 7535–01–M

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for Review of a Revised Information Collection: OPM Online Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for clearance of a revised information collection. OPM Online Form 1417, the Combined Federal Campaign (CFC) Information System form, collects information from the 302 local CFC campaigns to verify campaign results and collect contact information. Revisions to the form clarify OPM's request for campaign costs, solicitation data, prior-year receipts, and the inclusion of electronic fund information (EFT). Campaign EFT information is released only to Federal payroll providers for the proper and timely disbursement of aggregated donor pledges. OPM has routinely collected EFT information through e-mail.

We estimate 302 Online OPM Forms 1417 are completed annually. Each form takes approximately 20 minutes to complete. The annual estimated burden is 101 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the appropriate use of technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov.* Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Cherlynn Stevens, CFC Operations, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–22066 Filed 11–4–05; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52714; File No. SR–OPRA–2005–04]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Best Bid and Offer Guidelines Adopted Pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information

November 1, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on October 31, 2005, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission'') a proposal to amend Guideline No. 1 of the Best Bid and Offer Guidelines (''BBO Guidelines'') previously adopted by OPRA under Section II(o) of the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed amendment

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act

Continued

would reduce from five cents to one cent the minimum price differential by which a bid or offer must improve a current quote in order to displace the current quote in the consolidated BBO. OPRA also proposes to make a minor editorial correction to the introductory paragraph of the BBO Guidelines. The Commission is publishing this notice to solicit comments from interested persons on the proposed amendment.

I. Description and Purpose of the Amendment

According to OPRA, the purpose of the proposed amendment is to amend Guideline No. 1 of OPRA's BBO Guidelines to reduce from five cents to one cent the minimum price differential by which a bid or offer must improve a current quote in order to displace the current quote in the consolidated BBO. In addition, the proposed amendment will revise the introductory paragraph of the BBO Guidelines to correctly refer to the section of the OPRA Plan where the definition of ''BBO'' is set forth.

Under the current rules of the exchanges that are parties to the OPRA Plan, the minimum quoting increment for options is five cents (ten cents for options quoted at $3 or higher), and no exchange currently quotes options in penny increments. Before any exchange could quote options in penny increments, it would first have to file a proposed rule change to that effect with the Commission, and the Commission would have to approve that filing. In the absence of this amendment, if penny quoting were to be introduced on one or more exchange and if an exchange were to improve the current best quote on another exchange by less than five cents, the original quote and not the improved quote would continue to be disseminated over OPRA's BBO service as the ''best'' even though a better quote would in fact be available. This amendment would assure that, in the event penny quoting is introduced in the options markets, OPRA's BBO service would disseminate the actual best-priced bids and offers at any given point in time.

OPRA believes it is important to note that unless and until at least one exchange begins to quote options in pennies, the proposed amendment to the BBO Guidelines will have no practical effect. However, amending the BBO Guidelines at this time assures that if the Commission approves exchange rules providing for quoting options in pennies, the BBO Guidelines will already have been amended to take penny quoting into account.

The text of the proposed amendment to the BBO Guidelines is set forth below. Text additions are in *italics;* deletions are in [brackets].

* * * * *

Section V(c)(i) of the OPRA Plan provides for the dissemination by OPRA of, among other things, a consolidated BBO. Section *II(o)* [III(s)] of the OPRA Plan defines the BBO as the highest bid and lowest offer for a series of options available in one or more of the options markets maintained by the parties, as determined in accordance with ''BBO Guidelines'' adopted by the parties to the Plan. The BBO Guidelines as currently in effect are as follows:

1. Price/Time Priority. The BBO is determined on the basis of the best price (highest bid and lowest offer) quoted in time by a market, provided that in order to displace the current best bid or offer, a quote must improve the current quote by no less than *one* [five] cent[s].

Example 1. Assume the disseminated BBO is $2.00 bid and $2.25 offered (50 x 50) on Exchange A, which was the first to quote at those prices. If Exchange B improves the bid to $2.0*1*[5] while also offering at $2.25 (50 x 50), the best bid will become Exchange B's while the best offer will continue to be Exchange A's, since Exchange B will have improved the bid by *one* [five] cent[s] while Exchange A remains first at the offered price.

2.–5. [No Change]

* * * * *

II. Implementation of the OPRA Plan Amendment

The proposed amendment to the BBO Guidelines will be effective upon its approval by the Commission pursuant to Section 11A of the Act[4] and Rule 608 thereunder.[5]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendment 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 No. SR–OPRA–2005–04 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–OPRA–2005–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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–OPRA–2005–04 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22177 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52710; File No. SR–OPRA–2005–03]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Provide That Classes of Foreign Currency Options Newly Introduced for Trading on the Philadelphia Stock Exchange Be Treated as Equity/Index Options During a Temporary Period Ending on December 31, 2007

November 1, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on October 21, 2005, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] The proposed OPRA Plan amendment would provide that classes of Foreign Currency Options (''FCO Securities'' or ''FCO''), newly introduced for trading on the PHLX during a temporary period ending no later than December 31, 2007, will be treated by OPRA as Equity/Index Options (''EIO Securities'' or ''EIO'') to the extent described in the proposed amendment. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

FCO Securities under the OPRA Plan are currently traded only on the PHLX, which processes these options on a separate computer platform from its EIO Securities. The FCO platform is a legacy system, which is in the process of being converted to a newer technology. The PHLX has advised OPRA that it expects to have this effort completed no later than December 31, 2007, and that, in the meanwhile, the PHLX does not intend to devote resources to expanding the soon to be replaced legacy platform. Because the legacy FCO platform does not have the capacity to handle additional classes of FCO Securities that may be introduced for trading by the PHLX while the new platform is being developed, the PHLX has proposed to temporarily process any such new classes of FCO Securities on its EIO platform, which does have the capacity to handle them, until the new FCO platform is available. According to OPRA, this would mean that, while these new FCO Securities are on the EIO platform, their quotes and trade reports would be disseminated to OPRA over EIO data lines and not over the FCO data line. In turn, this would require OPRA to treat these quotes and trade reports as if they were EIO Securities. Thus, quotes and trade reports covering these new FCO Securities would be included in OPRA's basic service and not in its FCO service, and revenues and expenses pertaining to market data regarding these new FCO Securities would be allocated to OPRA's basic accounting center and further allocated among the parties to the OPRA Plan as if these products were EIO Securities and not FCO Securities.

OPRA represents that all currently traded FCO products would continue to be disseminated on the current FCO data line, and would continue to be treated by OPRA as FCO Securities. Only newly traded FCO Securities would be treated as EIO Securities and only for a temporary period while the PHLX's upgraded FCO platform is being developed.

At the PHLX's request, OPRA proposes to amend the OPRA Plan in order to codify in the language of the OPRA Plan the above-described temporary treatment of the PHLX's newly traded FCO Securities.

The text of the proposed amendment to the OPRA Plan is set forth below. Text additions are in *italics.*

* * * * *

VIII. Financial Matters

* * * * *

(c) FCO Accounting Center Costs and Revenues

(i) and (ii) [No Change]

(iii) Special Temporary Provision for Newly Traded FCO Securities. This paragraph (c)(iii) applies only to FCO Securities that are introduced for trading on the Philadelphia Stock Exchange (''PHLX'') during the period while this paragraph is in effect. FCO Securities introduced for trading by PHLX during this period are referred to as ''New FCO Securities.''

Notwithstanding anything in the Plan to the contrary, effective during a temporary period ending on December 31, 2007, or on such earlier date as may be established by the party or parties trading New FCO Securities, written notice of which shall be given to the other parties (''period of effectiveness''), access to information and facilities pertaining to New FCO Securities shall not be subject to the separate fees and charges that would otherwise apply to such access pertaining to FCO Securities, but instead shall be subject to those fees and charges that apply to Eligible Securities other than FCO Options and Index Options. During the period of effectiveness, revenues derived from New FCO Securities shall be allocated to OPRA's basic accounting center and shall be further allocated among the parties as described in section VIII(a)(iv), and trades in New FCO Index Options and not as trades in FCO Securities. At the close of business on the last day of the period of effectiveness, this section VIII(c)(iii) shall automatically terminate and cease to be of any further effect.

* * * * *

II. Implementation of the OPRA Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Section 11A of the Act[4] and Rule 608 thereunder.[5] OPRA states that the proposed amendment would apply to any new classes of FCO Securities introduced for trading on the PHLX during the period beginning at the time the proposed amendment is approved by the Commission and ending when the proposed amendment expires in accordance with its terms.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3–2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc (''PHLX'').

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

No. SR–OPRA–2005–03 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–OPRA–2005–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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–OPRA–2005–03 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22180 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52701; File No. SR–Amex–2005–101]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, Relating to Equity Transaction Charges

October 28, 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 American Stock Exchange LLC (''Amex'' 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 Amex. On October 18, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On October 27, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[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

The Exchange proposes to revise a variety of equity transaction fees that Exchange members are charged for executions on the Exchange. These fee changes will only apply to equity issues, and, accordingly will leave unchanged the current transaction charges for Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts (''Exchange-Traded Funds'' or ''ETFs'').

The text of the proposed rule change, as amended, is available on the Amex's Web site at *http://www.amex.com*, at the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to amend its Equity Fee Schedule to revise a variety of transaction fees applicable to Exchange members. These fee changes will be assessed on Exchange members commencing October 3, 2005.

The Exchange proposes the following changes to the Amex Equity Fee Schedule: (i) Adoption of a monthly transaction charge of $.0030 per share for up to 50 million shares and $.0025 per share for amounts over 50 million shares; (ii) elimination of transaction charges based upon the total gross dollar amount; (iii) clarification that transaction charges are calculated based on each transaction rather than each order; (iv) revision to the transaction charges so that only the first 5,000 shares of each executed transaction are assessed the charge; (v) elimination of transaction charges for transactions resulting from electronic orders of up to 500 shares;[7] (vi) elimination of the fee exemption for transactions by Amex option specialists and registered options traders (''ROTs'') in paired securities; (vii) elimination of the 50% fee exemption for proprietary trades in Canadian securities; and (viii) changing the name of the ''Regulatory Fee'' to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On October 27, 2005, the Amex withdrew Amendment No. 1.

[4] In Amendment No. 2, the Exchange: (1) Clarified its current practice of assessing equity fees on transactions rather than orders; (2) provided further explanation of how the proposed rule change will attract additional order flow to the Exchange; (3) changed the name of the current ''Regulatory Fee'' to a ''Specialist Transaction Fee'' and provided clarification as to the purpose of that change; (4) amended the rule text to specifically indicate that System Orders are subject to a transaction charge; and (5) generally provided clarification regarding the purpose of the proposed rule change.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] The Commission notes that a clarifying change was made to item (v). Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on October 28, 2005.

''Specialist Transaction Fee,'' eliminating application of the fee to all market participants except specialists, and increasing the fee from $.00005 to $.00007 of the total value of all specialist transactions in equities.

The Amex currently charges members monthly fees for transactions in equity securities (excluding ETFs) executed on the Exchange. Although the current Equity Fee Schedule states that in calculating the transaction charges, each order is assessed on the first 25,000 shares only, the Exchange's current process is to assess transaction charges on each transaction rather than on each order. In order to accurately reflect the manner in which equity transaction charges are presently assessed, in addition to revising the amount of the ''Transaction Charges'' as described below, the Exchange also is clarifying that assessment of transaction charges is based on each transaction (including transactions resulting from orders entered electronically) rather than on each order. The current transaction charges are shown in the table below.

TRANSACTION CHARGES

Share-based charge: total shares/month	Rate per share	Value-based charge: total gross dollar	Rate per 1000
Up to 16,500,000	$.00225	Up to 200,000,000	.07500
16,500,001–25,000,000	.00200	$200,000,001–300,000,000	.07000
25,000,001–33,000,000	.00175	$300,000,001–400,000,000	.06500
Over 33,000,000	.0015	Over $400,000,000.	

The Exchange is largely proposing to revise the current equity transaction fee to clarify and simplify execution charges on the Exchange applicable to equity transactions. The proposed changes will not apply to transactions in ETFs. The Amex expects the proposal to generate additional revenue for ongoing operations while also being attractive to market participants and competitive with other exchanges. In particular, the Exchange believes that the proposal will attract additional order flow because the current transaction charge ceiling of 25,000 shares will be lowered to 5,000 shares. The Exchange believes that this is particularly significant for those market participants transacting in ''lower-priced'' stocks at the Exchange since the transaction fee as a percentage of the total transaction value will be significantly reduced.[8] Accordingly, although the proposal will increase specialist fees in connection with equity transactions, the Exchange submits that the reduction in aggregate transaction fees (even though the rate per share will increase) for all other market participants is expected to help attract additional order flow to the Exchange.

The Amex's equity transaction fee proposal also provides for the elimination of the graduated monthly transaction fees, as set forth above, and the adoption of monthly transaction fees that consist of a per share charge of $.0030 for monthly transactions of shares of up to 50 million and a $.0025 per share charge for monthly transactions of greater than 50 million shares. The current value-based charge assessed on the total gross dollar amount of a transaction would also be eliminated. The Exchange proposes to calculate the new transaction charges on the first 5,000 shares rather than the current 25,000 shares. The Exchange submits that the current Equity Fee Schedule does not properly reflect how transaction charges are assessed. Therefore, the Exchange proposes in its filing to clarify that the calculation of transaction charges will be assessed on each transaction, not on each order.

According to the Exchange, specialist trades will continue to be free of monthly per share transaction charges, while the current fee exemption for transactions by Amex options specialists and ROTs in paired securities[9] will be eliminated. The proposal also seeks to eliminate the 50% fee exemption for proprietary trades in Canadian securities. In both cases, the Exchange believes that the exemptions are unnecessary in order to attract order flow in equity securities.

In addition, transactions resulting from orders entered electronically into the Amex Order File from off the floor of the Exchange (''System Orders'') of up to 500 shares (instead of the current 2,099 shares) will not be assessed a transaction charge. The Exchange has also proposed to change the name of the ''Regulatory Fee'' to a ''Specialist Transaction Fee.''[10] Pursuant to the Amex proposal, the Specialist Transaction Fee will only be applied to specialist transactions (unlike the ''Regulatory Fee'' that applied to all market participants) and will be increased from the current level of $.00005 to $.00007 of the total value of specialist transactions in equity securities.[11] In addition, the Exchange proposes to eliminate the exemption from assessment of the Regulatory Fee (now the ''Specialist Transaction Fee'') for transactions resulting from System Orders of up to 2,099 shares. In this manner, all specialist system orders will be subject to the Specialist Transaction Fee. The Amex submits that the Specialist Transaction Fee is the only transaction-based fee that the Exchange charges specialists in connection with equity securities.

The revised equity transaction charges, as proposed, are set forth below.

TRANSACTION CHARGES

Share-based charge: total share/month	Rate per share
Up to 50,000,000	$.0030
Over 50,000,000	.0025

According to the Exchange, the proposal to revise equity transaction fees applicable to Exchange members is consistent with Section 6(b)(4) of the Act.[12] The Exchange believes that the

[8] For example, based on the current Equity Fee Schedule, the monthly maximum share-based transaction charge for up to 16.5 million shares is $56.25 per transaction plus a maximum value-based charge of $40 per trade. Under the proposal, the monthly maximum transaction charge for up to 16.5 million shares will be $15 per transaction.

[9] The term ''paired security'' means a security that is the subject of securities trading on the Exchange and Exchange option trading, provided, however, that the term ''paired security'' does not mean an Exchange-Traded Fund Share or Trust Issued Receipt which is the subject of securities trading on the Exchange and Exchange option trading if the Exchange-Traded Fund Share or Trust Issued Receipt meet the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A, or approved by the Commission as eligible for trading arrangements under Rule 175(c)(2) and Rule 958(e).

[10] The Exchange submits that its regulatory obligations are funded by numerous sources.

[11] The equity regulatory fee amount has remained relatively unchanged since 1994. *See* Securities Exchange Act Release No. 33456 (January 11, 1994), 59 FR 2886 (January 19, 1994).

[12] Section 6(b)(4) states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other

Continued

proposal provides for an equitable allocation of reasonable fees among Exchange members largely through the elimination of various fee exemptions and a small increase in the specialist transaction fee (formerly, the regulatory fee). Specifically, the increase in the specialist transaction fee that will be assessed on the total value of specialist transactions is the only transaction-based fee that specialists pay in connection with equity securities. In addition, the Exchange expects the proposal to attract additional order flow largely due to the reduction in the current transaction charge ceiling even though the transaction fee rate per share is slightly increased. Therefore, the Exchange maintains that the proposed equity transaction fee changes, in the aggregate, are an equitable allocation of reasonable fees among its members.

The Exchange believes that the proposed revision to equity transaction fees will better clarify for all market participants the transaction charges applicable to equity orders executed on the Exchange. In addition, the Exchange also submits that the revision will provide additional revenue to support ongoing operations as well as create greater incentives for market participants to send order flow to the Amex.

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(4) of the Act,[14] in particular, in that it is designed to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78(f)(b)(4).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(2) of Rule 19b–4 thereunder,[16] since it establishes or changes a due, fee or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–101 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–Amex–2005–101. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Amex.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–Amex–2005–101 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6141 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] The effective date of the original proposed rule change is September 30, 2005, and the effective date of Amendment No. 2 is October 27, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 27, 2005, the date on which Amex filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52698; File No. SR–CBOE–2005–78]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Fee Waiver for Certain Transactions in SPX LEAPS® Options

October 28, 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 26, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''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. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by CBOE pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal

[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).

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

CBOE proposes to amend its Fees Schedule to waive fees through December 15, 2005 for certain transactions in S&P 500 index options LEAPS®.[5] The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to waive fees for certain transactions in S&P 500 index (''SPX'') options LEAPS through December 15, 2005, which is the last day of trading in the December 2005 SPX options series. Specifically, the Exchange will waive all trading related fees (transaction, floor brokerage, and OBO fees) for transactions in which a market participant closes a position in reduced-value SPX LEAPS (''RV SPX LEAPS'') and simultaneously opens a corresponding position in full-value SPX LEAPS (''FV SPX LEAPS'').[6]

The fee waiver would apply only to trades that close positions in RV SPX LEAPS and simultaneously open corresponding positions in FV SPX LEAPS. The fee waiver would apply on a 10-for-1 basis only.[7] For example, if a market participant closes 100 contracts of the December 2006 120 strike RV SPX LEAPS and opens a 10 contract position in the December 2006 1200 strike FV SPX LEAPS, all trading related fees would be waived for all contracts in both transactions. However, if a market participant closes 100 contracts of the December 2006 120 strike RV SPX LEAPS and opens a 100 contract position in the December 2006 1200 strike FV SPX LEAPS, fees would be waived for all of the RV SPX LEAPS contracts but only for 10 contracts of the FV SPX LEAPS transaction. All standard fees would apply to the remaining 90 contracts of the FV SPX LEAPS transaction.

The purpose of the proposed fee waiver is to encourage rollover of open interest in currently listed RV SPX LEAPS series into FV SPX LEAPS series, in order to facilitate the listing of series in options on the Mini-SPX (''XSP'').[8] Currently, the Exchange lists December 2006 and December 2007 series in both the RV SPX LEAPS and the FV SPX LEAPS. After December 2005 expiration, the Exchange will list the XSP December 2006 series and after December 2006 expiration, the Exchange will list the XSP December 2007 series. Since XSP options, like RV SPX LEAPS, are also based on 1/10th the value of the S&P 500 Index, the Exchange intends to move any open interest in December 2006 and 2007 RV SPX LEAPS into December 2006 and 2007 XSP series, respectively, once those XSP series have been listed, in order to avoid having open at the same time two ''reduced-value SPX'' products.[9] The purpose of the proposed fee waiver is to encourage as much open interest as possible to move from the RV SPX LEAPS into the FV SPX LEAPS before the Exchange moves any remaining open interest in RV SPX LEAPS into the XSP.

Market participants who effect transactions that qualify for the fee waiver will receive a rebate of trade related fees (transaction, floor brokerage, and OBO fees) incurred by the transactions.[10] The rebate will be processed as a credit on billing statements produced at each month-end.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2) thereunder,[14] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] Index LEAPS are long-term index option series that can expire up to 60 months from the date of issuance. *See* CBOE Rule 24.9(b).

[6] Pursuant to CBOE Rule 24.9(b), the Exchange may list LEAPS based on the full and the reduced value of the underlying index.

[7] The RV SPX LEAPS are 1/10th the size of the FV SPX LEAPS.

[8] The Exchange has announced that it intends to list XSP options in late October 2005.

[9] The Commission notes that the rollover of RV SPX LEAPS into XSP options is not the subject of this proposed rule change.

[10] The Exchange has represented that the waiver will be accomplished through a rebate to market participants, rather than a traditional waiver, for processing and administrative reasons, but that the effect of the rebate will be the same as if the fees were initially waived. Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and Deborah Flynn, Assistant Director, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on October 12, 2005.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

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–2005–78 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–CBOE–2005–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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–2005–78 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6138 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52711; File No. SR–ISE–2004–04]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Relating to Exposure Periods in the Facilitation and Solicited Order Mechanisms

November 1, 2005.

I. Introduction

On February 23, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the exposure period in its Facilitation and Solicited Order Mechanisms from ten seconds to three seconds. The ISE filed Amendments No. 1 and 2 to the proposal on September 7, 2005, and September 20, 2005, respectively.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 28, 2005.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of Proposal

Supplementary Material .04 to ISE Rule 716, ''Block Trades,'' currently provides ISE members with 10 seconds to respond to broadcast messages for orders entered into the ISE's Facilitation and Solicited Order Mechanisms. The ISE proposes to amend ISE Rule 716, Supplementary Material .04 to reduce the exposure period in the Facilitation and Solicited Order Mechanisms from 10 seconds to three seconds.[5]

Similar to the Facilitation and Solicited Order Mechanisms, the ISE's Price Improvement Mechanism (''PIM'') provides an auction process through which an ISE member may trade with its customer's order as principal or execute its customer's order against orders the member has solicited.[6] The exposure period for orders entered into the ISE's PIM is three seconds. The ISE notes that the PIM is an interactive auction in which ISE members receive and may respond to multiple price updates within the three-second exposure period. In contrast, ISE members receive only one message at the start of an auction for orders entered into the Facilitation and Solicited Order Mechanisms. The ISE believes that there is no reason for providing different exposure periods in the three mechanisms because, in each of the three mechanisms, ISE members are notified of orders and enter their interest in trading with such orders in the same technical manner.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b),[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[9] In particular, the Commission believes that reducing the exposure period for orders entered into the ISE's Facilitation and Solicited Order Mechanisms from 10 seconds to three seconds could facilitate the prompt execution of these orders while providing participants in ISE's market with an adequate opportunity to compete and provide price improvement for the orders.

In approving the ISE's PIM, the Commission concluded that the three-second PIM auction should afford electronic crowds sufficient time to compete for orders submitted to the PIM.[10] In reaching this conclusion, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded and replaced the ISE's original filing in its entirety. Amendment No. 2 corrected a non-substantive typographical error in the text of the proposed rule change, and two incorrect references in footnotes to the Form 19b–4 for Amendment No. 1 and Exhibit 1 thereto.

[4] *See* Securities Exchange Act Release No. 52479 (September 21, 2005), 70 FR 56755.

[5] ISE Rule 716 originally required that orders be exposed in the Facilitation Mechanism for 30 seconds. In September 2002, the Commission approved an ISE proposal to reduce this exposure period from 30 seconds to 10 seconds. *See* Securities Exchange Act Release No. 46514 (September 18, 2002), 67 FR 60627 (September 25, 2005) (order approving File No. SR–ISE–2001–19). The Commission approved the ISE's Solicited Order Mechanism in June 2004 with an exposure period of 10 seconds. *See* Securities Exchange Act Release No. 49943 (June 30, 2004), 69 FR 41317 (July 8, 2004) (order approving File No. SR–ISE–2001–22).

[6] *See* ISE Rule 723, ''Price Improvement Mechanism for Crossing Transactions.'' *See also* Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (order approving File No. SR–ISE–2003–06) (''PIM Order'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* PIM Order, *supra* note 6.

Commission stated that the critical issue is determining whether the three-second timeframe would give participants in a fully automated marketplace sufficient time to respond to a PIM broadcast, to compete, and to provide price improvement for orders, and whether electronic systems were available to ISE members that would allow them to respond to PIM broadcasts in a meaningful way within the proposed timeframe.[11] The Commission noted that the ISE is a fully electronic exchange where crowd members interact by electronic means, and that electronic systems were readily available, if not already in place, that would allow ISE members to respond to PIM broadcasts.[12]

The Commission believes that its rationale for approving the three-second PIM auction applies equally to auctions in the Facilitation and Solicited Order Mechanisms. In this regard, the Commission notes that in contrast to the PIM, which provides an interactive auction in which ISE members may receive and respond to multiple price updates within the three-second exposure period, the Facilitation and Solicited Order Mechanisms provide ISE members with only one message at the start of the auctions. Accordingly, the Commission believes that the electronic systems that would allow ISE members to receive and respond to multiple price updates during a three-second PIM auction also should allow them to respond in a meaningful way to three-second auctions in the Facilitation and Solicited Order Mechanisms.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–ISE–2004–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22179 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* PIM Order, *supra* note 6.

[12] *See* PIM Order, *supra* note 6.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52709; File No. SR–NASD–2005–117]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Seeking Permanent Approval of Rules Concerning Bond Mutual Fund Volatility Ratings Prior to Expiration of Pilot

November 1, 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 28, 2005 and October 24, 2005 (Amendment No. 1), the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is seeking permanent approval of NASD Rule 2210(c)(3) and Interpretive Material 2210–5 concerning bond mutual fund volatility ratings prior to the expiration of the pilot on December 29, 2005.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM–2210–5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

[(This rule and Rule 2210(c)(3) will expire on December 29, 2005, unless extended or permanently approved by NASD at or before such date.)]

(a) through (c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Description of NASD's Rules on Bond Mutual Fund Volatility Ratings

On February 29, 2000, the SEC approved on a pilot basis NASD Interpretive Material 2210–5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).[3] At that time, the SEC also approved as a pilot NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. Previously, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material.

IM–2210–5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word ''risk'' may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide to investors through a toll-free telephone number or Web site (or both) a detailed disclosure on its rating methodology.
- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file for approval with NASD's Advertising Regulation Department (''Department''), at least 10 days prior to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

use, bond mutual fund sales literature that includes or incorporates volatility ratings. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved.

IM–2210–5 and Rule 2210(c)(3) initially were approved on an 18-month pilot basis that was scheduled to expire on August 31, 2001.[4] NASD subsequently renewed the pilot several times, most recently with a proposed rule change that was effective upon filing and extended the pilot provisions until December 29, 2005.[5]

Proposed Rule Change To Make Permanent IM–2110–5 and Rule 2210(c)(3)

As indicated in the SEC's original order approving IM–2210–5 and Rule 2210(c)(3) on a pilot basis and the NASD Notice to Members announcing such approval,[6] NASD requested the 18-month pilot period to consider whether:

- The rule has facilitated the dissemination of useful, understandable information to investors;
- The rule has prevented the dissemination of inappropriate or misleading information by members and associated persons;
- Additional guidance concerning the use of certain terminology may be necessary;
- The rule should apply to in-house ratings;
- The rule should apply to all investment companies; and
- Additional standards or guidance is needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

Due to the small number of bond volatility ratings filings received during the Rule's initial 18-month pilot, NASD extended the pilot to accumulate more data with which to evaluate the program. Ultimately, during the entire period from February 2000, when the Rule was first approved, until the present, NASD has received a total of 47 submissions from seven NASD members. In general, the filings of sales material that contained bond fund volatility ratings have met the Rule's requirements.

Based on its findings during this period, NASD has concluded that the Rule's provisions are appropriate and do not require further amendment before being made permanent. In particular, NASD believes that the Rule has facilitated the dissemination of useful and understandable information to investors and has prevented the dissemination of inappropriate or misleading information. In this regard, virtually all of the filings NASD has received under the Rule have met the Rule's requirements, and NASD is not aware of any investor complaints concerning sales material that contains volatility ratings. The level of member compliance with the Rule also suggests that members do not require additional guidance concerning the use of certain terminology in the Rule. Similarly, NASD is not aware of any concerns that investors may be confused or that there may be excessive variability among ratings or similar portfolios.

NASD also has examined the issue of whether the Rule should apply to in-house ratings. At the time the Rule was approved, NASD observed that the Rule should not apply to in-house ratings on the grounds that they are not procured for a fee, are used primarily by fund investors as an aid in distinguishing between risk levels within a family of funds, and may be calculated using different methods from those used in calculating volatility ratings.[7] NASD continues to believe that those are persuasive reasons to not apply the Rule to in-house ratings. NASD believes that in-house ratings do not raise the same concerns as third-party ratings, and thus do not merit application of the bond fund volatility ratings rule.

NASD also believes that it is unnecessary at this time to apply the rule to other types of investment companies, such as unit investment trusts. At no time throughout the extended pilot period has a member requested that the rule apply to such material, and NASD is not aware of third-party volatility ratings that are being used to assess other types of investment companies. Accordingly, NASD sees no need to expand the rule's scope in this manner. NASD has stated its willingness to re-evaluate this conclusion if comments on the proposal suggest that the Rule should be expanded to cover other types of investment companies.

NASD believes that the rule strikes an appropriate balance between the desire of some funds to advertise volatility ratings and the need to include appropriate disclosures related to those ratings in sales material. Accordingly, NASD believes that the Commission should approve the Rule, as is, on a permanent basis.

Nevertheless, NASD suggests that the Commission seek comment on whether the timeliness requirements of IM–2210–5 continue to be appropriate in light of changes to SEC Rule 482 under the Securities Act of 1933 that have occurred since the adoption of IM–2210–5 and Rule 2210(c)(3). In this regard, IM–2210–5(b)(2) requires supplemental sales literature that includes bond fund volatility ratings to present the most recently available rating that ''reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.''

At the time IM–2210–5 was adopted, this standard mirrored the timeliness standard for mutual fund performance advertising under Rule 482. However, in 2003, the SEC amended Rule 482 to require mutual fund performance advertising to show performance that is current to the most recent calendar quarter ended prior to submission of an advertisement for publication, and to indicate where the reader may obtain performance that is current to the most recent month ended seven business days prior to use through a toll-free (or collect) telephone number or web site, or to present performance that meets this most recent month-end standard.[8]

Accordingly, NASD suggests that the Commission seek comment on whether the timeliness requirements of IM–2210–5(b)(2) should be modified to mirror those of amended Rule 482. More specifically, should the rule require all supplemental sales literature that includes a bond fund volatility rating either to show a rating that is current to the most recent calendar quarter ended prior to use, and disclose where the reader may find the most recent month-end rating, or provide the most recent month-end rating in the sales literature? NASD understands that rating agencies typically monitor bond funds on a monthly basis, but that it is quite rare for such agencies to revise a volatility rating on a month-to-month basis. Accordingly, NASD does not believe that it is necessary to require that volatility ratings be current as of the most recent month end given that, among other things, unlike fund

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 52372 (Aug. 31, 2005); 70 FR 53405 (Sept. 8, 2005) (SR–NASD–2005–104); Securities Exchange Act Release No. 48353 (Aug. 15, 2003); 68 FR 50568 (Aug. 21, 2003) (SR–NASD–2003–126); NASD Notice to Members 03–48 (Aug. 2003); Securities Exchange Act Release No. 44737 (August 22, 2001); 66 FR 45350 (August 28, 2001) (SR–NASD–2001–49); NASD Notice to Members 01–58 (Sept. 2001).

[6] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89); NASD Notice to Members 00–23 (April 2000).

[7] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

[8] SEC Rule 482(g).

performance, such ratings do not frequently change once they are issued.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 30 days following Commission approval. If the Commission approves the proposed rule change without material amendment, NASD is proposing that the rule change become effective immediately upon Commission approval, since the proposed rule is already in effect on a pilot basis. If the proposed rule change is approved only after material amendment that would require members to substantially modify their compliance systems or procedures, NASD will propose a later effective date to provide adequate time for such modifications.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that making IM–2210–5 and Rule 2210(c)(3) effective on a permanent basis will allow members to continue to publish sales material that contains bond fund volatility ratings in a manner that will protect investors and serve the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether such 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. The Commission particularly urges commenters to consider the proposed rule change in light of the specific comments that the NASD urged the Commission to seek.

Specifically, the Commission requests comment on whether the timeliness requirements of IM–2210–5(b)(2) should be modified to mirror the requirements pursuant to Rule 482 under the Securities Act of 1933. In other words, should the rule require all supplemental sales literature that includes a bond fund volatility rating either to show a rating that is current to the most recently ended calendar quarter prior to use, and disclose where the reader may find the most recent month-end rating, or provide the most recent month-end rating in the sales literature?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–117. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–117 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22178 Filed 11–4–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52712; File No. SR–NASD–2004–162]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish Fee and Notice Requirements for Substitution Listing Events and Other Corporate Changes

November 1, 2005.

I. Introduction

On October 26, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fee and notice requirements for substitution listing events and to provide additional transparency for corporate changes requiring a record-keeping fee. Nasdaq amended the proposal on May 11, 2005[3] and August 18, 2005.[4] The proposed rule change, as amended, was

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded and replaced the filing in its entirety.

[4] Amendment No. 2 superseded and replaced the amended filing in its entirety.

published for notice and comment in the **Federal Register** on September 22, 2005.[5] The Commission did not receive comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Nasdaq proposes to amend NASD Rules 4200(a), 4310, 4320, 4510, and 4520 to establish fee and notice requirements for each ''substitution listing event.'' The term ''substitution listing event'' would include: (1) The implementation of a reverse stock split; (2) an issuer's re-incorporation or a change in the issuer's place of organization (including a change in the issuer's state of incorporation); (3) formation of a holding company that replaces a listed company; (4) the reclassification or exchange of an issuer's listed shares for another security; (5) the listing of a new class of securities in substitution for a previously listed class of securities; and (6) any technical change whereby the shareholders of the original company receive a share-for-share interest in the new company without a change in their equity position or rights.

Nasdaq-listed securities may be divided into two groups: (1) Nasdaq-listed securities that Nasdaq designates as Nasdaq national market system securities, pursuant to NASD Rule 4400 Series (''Nasdaq designated securities''); and (2) all securities that are listed on a national securities exchange and subsequently listed on Nasdaq but not designated by Nasdaq as Nasdaq national market system securities (''Nasdaq non-designated securities'').[6] For Nasdaq designated securities, the proposed notice requirement and fee would apply. For Nasdaq non-designated securities, only the proposed notice requirement, and not the proposed fee, would apply.

Nasdaq has stated that, when it learns about a substitution listing event for a Nasdaq-listed security, it must implement technical changes to its trading, market data, and internal monitoring systems. In addition, Nasdaq would disseminate certain substitution listing event information about the issuer of a Nasdaq-listed security to other markets and market participants through a subscription service.[7] For a substitution listing event relating to a Nasdaq designated security, Nasdaq would directly contact the issuer to verify the details of the event. For a substitution listing event relating to a Nasdaq non-designated security, however, Nasdaq would not contact the issuer directly to verify the details of the event; instead, Nasdaq would receive an electronic consolidated report from the national securities exchange that has designated the security as a national market system security under that market's national market system plan. The exchange would disseminate information on the substitution listing event for that security. Nasdaq would use this electronic consolidated report to make the necessary changes to its systems.[8]

Nasdaq has represented that it has dedicated specific resources to manage the process for collecting and verifying information for substitution listing events and for implementing the related changes for its issuers so that such changes are accurately and promptly reflected in its trading, market data, and internal monitoring systems. To support these activities, Nasdaq proposes to establish a fee of $7,500 per substitution listing event for issuers of Nasdaq designated securities. Nasdaq has stated that, since the costs associated with managing the information for substitution listing events for issuers of Nasdaq non-designated securities are reduced through Nasdaq's use of electronic consolidated reports from other markets, it would waive the substitution listing event fee for these issuers.[9] Waiving these fees also would eliminate the possibility that these issuers would be charged twice for the same substitution listing event, since other markets charge these issuers a fee for substitution listing events. For example, both NYSE and the American Stock Exchange LLC (''Amex'') charge a fee for substitution listing events. NYSE charges a ''Reduced Initial Fee'' of $15,000 for a substitution listing event[10] and Amex charges $5,000 for a substitution listing event.[11]

Under the amended proposal, issuers of both Nasdaq designated securities and Nasdaq non-designated securities would be required to notify Nasdaq about a substitution listing event no later than 15 days prior to the implementation of the substitution listing event so that Nasdaq would have sufficient time to implement the technical changes into its systems. For a re-incorporation or a change to an issuer's place of organization, however, Nasdaq would require an issuer to notify Nasdaq as soon as practicable after the event has been implemented, since such an event may be contingent on shareholder approval and would not require immediate changes to Nasdaq's systems.

Finally, the proposal would require an issuer to notify Nasdaq of a corporate action that would require the payment of a record-keeping fee. Specifically, Nasdaq proposes to amend NASD Rules 4310(c)(20), 4320(e)(18), 4510(e), and

[5] *See* Securities Exchange Act Release No. 52430 (September 14, 2005), 70 FR 55643.

[6] If a security is originally listed on an exchange and designated by the exchange as a national market system security under the exchange's national market system plan, Nasdaq would not exercise its authority to later designate the security as a national market system security under its own national market system plan. This arrangement creates uniformity across all markets with respect to a dually listed security's ticker symbol, trading halt declarations, trade reporting, and status under the trade-through provisions of the Intermarket Trading System Plan. *See* NASD IM–4400.

[7] Nasdaq has stated that it provides advance notification of certain substitution listing events, such as reverse stock splits, to member firms, market data vendors, service bureaus, and other subscribers of its daily list service. Notification of the substitution listing event information on Nasdaq's daily list service is subsequently provided to users of Nasdaq's systems through a fifth letter identifier, such as a ''D,'' that is temporarily added to an issuer's trading symbol. Re-incorporations or changes to the place of organization are recorded in Nasdaq's internal database, but are not disseminated to market participants.

[8] For example, Nasdaq stated that it uses electronic reports from the New York Stock Exchange (''NYSE'') to verify the details of the substitution listing events for NYSE-listed securities that are subsequently also listed on Nasdaq but are still designated by the NYSE as national market system securities pursuant to the NYSE's national market system plan. The consolidated reports from the NYSE contain information regarding reverse stock splits, the substitution of a previously listed class of securities for another class, the creation of a holding company, and the reincorporation or change to the place of organization of an issuer.

[9] Nasdaq has represented that the lack of such fees from these issuers would not impair Nasdaq's ability to fulfill its regulatory responsibilities and enforce its rules. Furthermore, although Nasdaq relies on consolidated reports in managing the substitution listing events process for these issuers, Nasdaq has represented that its rules must be ''designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and promote orderly produces for collecting, distributing, and publishing quotations' pursuant to Section 15A(b)(11) of the Act, 15 U.S.C. 78o–3(b)(11).

[10] *See* NYSE Listed Company Manual Section 902.02. The $15,000 fee applies only if the change in the company's status is technical in nature and the shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights. If the substitution event does not comply with these requirements, the full initial listing fees would apply.

[11] *See* Amex Company Guide Sections 142 and 305. For Amex issuers, a substitution listing fee applies in cases where, after the original listing, a change is made by charter amendment or otherwise by which shares listed on Amex are reclassified, or changed into or exchanged for another security, either with or without a change in par value. Amex also charges a substitution listing fee whenever a company implements a reverse stock split, re-incorporates, lists a new class of securities in substitution of a previously listed class of securities, or otherwise engages in a transaction which would require the company to file a new Form 8–A with the Commission in regard to the previously listed security.

4520(d) to clarify that an issuer of a Nasdaq-listed security that is subject to a record-keeping fee must submit the appropriate form to Nasdaq within ten days after a change that requires payment of a record-keeping fee. Nasdaq has represented that this proposed change reflects the current practice of Nasdaq issuers.

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities association.[12]

The Commission believes that the proposed notice requirement for a substitution listing event is consistent with Section 15A(b)(6) of the Act,[13] which requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Nasdaq is requiring all of its issuers to provide notice of substitution listing events for the purposes of maintaining up-to-date corporate information and disseminating accurate information about its listed securities. This requirement should better enable Nasdaq to perform its essential monitoring functions and enhance the flow of accurate market data.

In addition, the Commission believes that the fee for a substitution listing event is consistent with Section 15A(b)(5) of the Act,[14] which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The fee is designed to offset the costs associated with collecting and verifying information related to substitution listing events and for implementing requisite systems changes. The Commission believes that it is reasonable for a listing market to assess fees on its issuers that will enable the listing market to make necessary systems changes and to carry out its regulatory responsibilities. With respect to the fee waiver for issuers of Nasdaq non-designated securities, the Commission notes that it has previously approved a waiver of fees based on a security's dually listed status.[15] Nasdaq has represented that its costs for processing substitution listing events of Nasdaq non-designated securities are significantly reduced on account of Nasdaq's reliance on electronic consolidated reports received from the listing market for such securities. On this basis, the Commission believes that the proposed fee for Nasdaq designated securities and the proposed fee waiver for substitution listing event fee for Nasdaq non-designated securities are a reasonable allocation of fees among issuers.

Finally, the Commission believes that codifying a requirement for an issuer to notify Nasdaq of the payment of a corporate record-keeping fee is reasonable and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–2004–162), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22181 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[12] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78o–3(b)(5).

[15] *See* Securities Exchange Act Release No. 51005 (January 10, 2005), 70 FR 2917 (January 18, 2005) (approving, among other things, the waiver of entry fees, application fees, and additional shares listing fees for securities that are originally listed on a national securities exchange but later dually listed on Nasdaq).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52723; File No. SR–NASD–2005–128]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Establish Rules Governing the Operation of the INET System

November 2, 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 November 1, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq intends to purchase INET ATS, Inc. (''INET''), operator of the INET ECN (the ''INET System'' or ''System''). Nasdaq proposes to establish rules governing the operation of the INET System and fees for System services. Below is the text of the proposed rule change. Proposed new language is *italicized.*

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4950. INET SYSTEM

4951. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The terms ''The INET ECN System,'' ''INET System,'' or ''System,'' shall mean the automated system owned and operated by INET, which is owned and operated by The Nasdaq Stock Market, Inc., which enables Participants to execute transactions in System securities, to have reports of the transactions automatically forwarded to the appropriate National Market Trade Reporting System for dissemination to the public and the industry, to ''lock in'' these trades by sending both sides to the applicable clearing corporation(s) designated by the System Participant(s) for clearance and settlement, and to provide System Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(b) The term ''System Securities'' shall mean Nasdaq Market Center eligible securities as that term is defined in NASD Rule 4701(s) and ITS Securities securities as defined in NASD Rule 5210(c).

(c) The term ''Participant'' shall mean an entity that fulfills the obligations contained in NASD Rule 4952 regarding participation in the System.

(d) The term ''Nasdaq Market Center'' shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. pursuant to NASD Rule 4700 Series.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(e) The term ''System Book Feed'' shall mean a data feed for System eligible securities.

(f) The term ''normal unit of trading'' shall mean one hundred (100) shares.

(g) The term ''mixed lot'' shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(h) The term ''odd-lot'' shall mean an order that is for less than a normal unit of trading.

(i) The term ''Immediate or Cancel'' or ''IOC'' shall mean, for limit orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant.

(j) The term ''Market Day'' or ''Limit Day'' shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display/execution until 4:00 p.m. Eastern Time on the day it was submitted unless cancelled before then by the entering party.

(k) The term ''Extended Day'' shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until 8:00 p.m. Eastern Time.

(l) The term ''Expire Time'' shall mean, for orders so designated, the time until which the System will hold the order for potential execution.

(m) The term ''Limit Order'' shall mean an order to buy or sell a stock at a specified price or better.

(n) The term ''Market Order'' shall mean an un-priced order to buy or sell a stock at the market's current best price. A Market Order may have a limit price beyond which the order shall not be executed.

(o) The term ''Discretionary Order'' shall mean an order that has both a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is converted to an IOC order equal in size to the displayed size and priced at the most aggressive price in the discretionary price range when displayed shares become available or an execution takes place at any price within the discretionary price range. The generation of this IOC order is accompanied by the cancellation of the displayed portion of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert all such orders at the same time and priority will be given to the first IOC order(s) that reaches the trading interest on the other side of the market. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, its original displayed price, and its non-displayed discretionary price range.

(p) The term ''Reserve Order'' shall mean a limit order that has both a round-lot displayed size as well an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than 100 shares, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.

(q) The term ''Pegged Order'' shall mean, for orders so designated, an order that, after entry, has its price automatically adjusted by the System in response to changes in the national best bid or offer (''NBBO''), as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the NBBO (''Primary Peg'') or the opposite side of the NBBO (''Market Peg''). In addition, Pegged Orders may also establish their pricing relative to the NBBO by the selection of one or more $0.01 offset amounts that will adjust the price of the order by the offset amount selected. A new timestamp is created for the order each time it is automatically adjusted.

(r) The term ''Displayed Order'' shall mean, for limit orders so designated, an order that is displayed in the System, in whole or in part, and is available for potential execution against all incoming orders until executed in full or cancelled.

(s) The term ''Non-Displayed Order'' shall mean, for limit orders so designated, an order that is not displayed in the System, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.

(t) The term ''Minimum Quantity Order'' shall mean, for orders so designated, an order that requires that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of Immediate or Cancel.

4952. System Participant Registration

(a) Participation in INET requires current registration with the System and is conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) execution of a System Subscriber Agreement;

(2) satisfaction of INET new account policy and procedure requirements;

(3) membership in, or an access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which System compared trades may be settled;

(4) acceptance and settlement of each System trade that the System identifies as having been effected by such Participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified System trade by the clearing member on the regularly scheduled settlement date;

(5) compliance with all applicable rules and operating procedures of the Association and the Commission.

(6) In addition to the above, on or before 60 days after the System becomes a facility of Nasdaq, all System Participants shall be members of the Association.

4953. Order Entry Parameters

(a) INET System Orders

(1) General—An INET System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System as set forth in NASD Rule 4955.

(A) All INET System Orders shall indicate whether they are a Market Order or Limit Order and shall indicate if they are a buy, short sale, short-sale exempt, or long sale. INET Systems Orders can be designated as Immediate or Cancel (''IOC''), Market Day or Limit Day (''DAY''), Extended Day (''XDAY''), or Expire Time (''ExT'').

(B) An INET System order may also be designated as a Reserve Order, a Pegged Order, a Non-Displayed Order, a Minimum Quantity Order, or a Discretionary Order.

(2) Short Sale Compliance—INET System orders to sell short shall not be executed if the execution of such an order would violate Regulation SHO under the Exchange Act, NASD Rule 3350 or, for routed orders, the rules of

the applicable self-regulatory organization governing short selling or, in the case of ITS Securities, Rule 10a–1 under the Exchange Act.

(3) Routing—All INET System orders entered by participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in NASD Rule 4956.

4954. Entry and Display of Orders

(a) Entry of Orders—Participants can enter orders into the System, subject to the following requirements and conditions:

(1) Participants shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels. Each order shall indicate the amount of reserve size (if applicable).

(2) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.

(3) Orders can be entered into the System (or previously entered orders cancelled) between the hours 7 a.m. to 8 p.m. Eastern Time.

(A) Exception: Orders entered prior to 9:30 a.m. Eastern Time, or after 4 p.m. Eastern Time, seeking to be routed to either the New York or American Stock Exchanges shall be rejected.

(B) Exception: Pegged and Market Orders may only be entered between 9:30 a.m. and 4 p.m. Eastern Time.

(b) Display of Orders— The System will display orders submitted to the System as follows:

(1) System Book Feed—orders resident in the System will be displayed via the System Book Feed.

(2) Best Priced Order Display—For each System Security, the best priced order to buy and sell resident in the System will be displayed via the National Stock Exchange. The System's display of its orders in the National Stock Exchange shall not continue beyond September 30, 2006.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed Lots, and Rounding—The System Book Feed shall be capable of displaying trading interest in odd-lot, round lot and mixed-lot amounts and, for orders price under $1.00, in sub-penny increments.

(B) Minimum Increments ''The minimum trading increments for the System shall be set forth in NASD Rule 4962.

(C) Reserve Size—Reserve Size shall not be displayed in the System, but shall be accessible as described in NASD Rule 4955.

(D) Discretionary Orders—The discretionary portion of Discretionary Orders shall be made available for execution only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to NASD Rule 4955 and NASD Rule 4951(o).

(E) Non-Displayed Orders—Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to NASD Rule 4955.

(F) Trade-Through Compliance and Locked or Crossed Markets—If, at the time of entry, a Displayed Order in an exchange-listed security that the entering party has elected not to make eligible for routing would lock the market, it will be converted by the System into a Non-Displayed Order. If, at the time of entry, a similar Displayed Order would cross the market or would cause a trade-through violation, the order will be converted by the System to a Non-Displayed Order and re-priced to the current low offer (for bids) or to the current best bid (for offers). Such Non-Displayed Orders will be cancelled by the System if the market moves through the price of the order after the order is accepted.

4955. Order Processing

(a) INET Book Order Process

INET System orders shall be executed through the INET Book Order Process as set forth below:

(1) Default Execution Algorithm—Price/Time—The System shall execute equally priced or better priced trading interest within the System in price/time priority in the following order:

(A) Displayed Orders;

(B) Non-Displayed Orders, the reserve portion of Reserve Orders, in price/time priority among such interest;

(C) The discretionary portion of Discretionary Orders as set forth in NASD Rule 4951(o).

(2) Decrementation—Upon execution, an order shall be reduced by an amount equal to the size of that execution.

(3) Price Improvement—any potential price improvement resulting from an execution in the System shall accrue to the taker of liquidity.

Example:

Buy order resides on INET book at 10.

Incoming order to sell priced at 9 comes into INET System

Order executes at 10 (seller get $1 price improvement)

4956. Routing

(a) INET Order Routing Process

(1) The INET Order Routing Process shall be available to Participants from 7 a.m. to 8 p.m. Eastern Time, and shall route orders as described below:

(A) Exchange-Listed Routing Options

The System provides five routing options for orders in exchange-listed securities. Of these five, only two—DOT Immediate and DOT Alternative—are available for orders ultimately sought to be directed to either the New York Stock Exchange (''NYSE'') or the American Stock Exchange (''AMEX''). The System also allows firms to send individual orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX. The five System routing options for NYSE and/or Amex listed orders are:

(i) DOT Immediate (''DOTI'')—under this option, after checking the INET System for available shares, orders are sent directly to the NYSE or the AMEX as appropriate. When checking the INET book, the System will seek to execute at the better price of either the limit price specified in the order, or the best price displayed at that time at the NYSE. If no liquidity is available in the INET System, the order will be routed directly to the NYSE or AMEX at the limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this option.

(ii) DOT Alternative (''DOTA'')—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution before the destination exchange. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this strategy.

(iii) Reactive Electronic Only (''STGY'')—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the

locking or crossing market center for potential execution. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

(iv) Electronic Only Scan (''SCAN'')—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

(v) Aggressive Electronic Only (''SPDY'')—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. Market orders with the SPDY designation will, during a locked or crossed market, have their price adjusted by the System to match the best price displayed on the same side of the market as the market order (i.e., a buy order to the bid, a sell to the offer). If the order is for a security eligible for a de minimis exception to the trade-through rule set forth in Section 8 (d)(i) of the ITS Plan, the System will ignore AMEX prices when adjusting the SPDY order. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. This process is one of the routing strategies allowed by the System for all securities.

(B) Nasdaq-Listed Routing Options

The STGY, SPDY, and SCAN options are the only routing options provided by the System for orders in Nasdaq-listed securities not sought to be directed to either the NYSE or AMEX.

(C) Priority of Routed Orders

Regardless of the routing option selected, orders sent by the INET System to other markets do not retain time priority with respect to other orders in INET's System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, short-sale regulation and order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.

4957. Clearance and Settlement

All transactions executed in the System shall be cleared and settled by and between the System Participant and INET, through a registered clearing agency using a continuous net settlement system.

4958. Obligation to Honor System Trades

(a) If a Participant, or clearing member acting on a Participant's behalf, is reported by the System, or shown by the activity reports generated by the System, as constituting a side of a System trade, such Participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

(b) INET and/or Nasdaq shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

4959. Compliance with Rules and Registration Requirements

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to it and its use of the System shall subject such Participant to censure, fine, suspension or revocation of its registration as Participant or any other fitting penalty under the Rules of the Association, or such other action, up to and including termination of access to the System.

(b) If a Participant fails to maintain a clearing relationship, or to honor its obligations under NASD Rule 4958, it shall have its access to the System restricted until such time as a clearing arrangement is reestablished and/or the Participant meets its obligation to honor System trades.

(c) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Association's Rules, to enforce its rules or impose any fitting sanction.

4960. Anonymity

(a) Transactions executed in the System shall be cleared and settled with INET. The transaction reports produced by the System will indicate the details of the transactions, and shall not reveal contra party identities other than INET.

(b) INET shall reveal a Participant's identity in the following circumstances:

(1) when the National Securities Clearing Corporation (''NSCC'') ceases to act for a participant, or the Participant's clearing firm, and NSCC determines not to guarantee the settlement of the Participant's trades;

(2) for regulatory purposes or to comply with an order of an arbitrator or court;

(3) no later than the end of the day on the date a trade was executed, when the participant's order has been decremented by another order submitted by that same Participant; or

(4) if both Participants to the transaction consent.

4961. Clearly Erroneous Transactions

Commencing no later than 60 days after the System becomes a facility of Nasdaq, all matters related to clearly erroneous transactions executed in the System shall be initiated and adjudicated pursuant to NASD Rule 11890.

4962. Minimum Quotation Increment

The minimum quotation increment in the INET System for quotations of $1.00 or above in Nasdaq-listed securities and in securities listed on a national securities exchange shall be $0.01. The minimum quotation increment in the INET System for quotations below $1.00 in Nasdaq-listed securities and in securities listed on a national securities exchange shall be $0.001.

4963. Normal Business Hours

The INET System operates from 7 a.m. to 8 p.m. Eastern Time on each business day.

4964. Limitation of Liability

The Association and its subsidiaries, as well as Nasdaq and INET and their subsidiaries, shall not be liable for any losses, damages, or other claims arising out of the System or its use. Any losses, damages, or other claims, related to a failure of the System to deliver, display,

transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the System. Notwithstanding the foregoing, the System may, within it sole discretion and for a period of time not to exceed 60 days after the System becomes a facility of Nasdaq, compensate users for losses arising out of the System or its use.

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7010. System Services (a)–(v) No Change.

(w) INET System Order Execution

(1) For a period of time not to exceed 60 days after INET becomes a facility of Nasdaq, the following charges shall apply to the use of the order execution services of Nasdaq's INET System by Participants for:

NASDAQ-Listed Securities

Order Execution

Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:

Charge to Participant entering order:

Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:

Greater than 60 million shares accessed or routed and 5 million shares provided: $0.0027 per share executed

Greater than 40 million shares but less than 60 million shares accessed or routed and 5 million shares provided: $0.0028 per share executed

Less than 5 million shares provided or less than 40 million shares accessed or routed: $0.0030 per share executed

Credit to Participant providing liquidity:

Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:

Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed: $0.0025 per share executed

Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed: $0.002 per share executed

Any order that matches against another order of the same Participant: $0.00025 per share per side.

Routed Orders

Any other order entered by a Participant that is routed outside of Nasdaq's INET System: $0.0025 per share executed

AMEX-listed Stocks

Order Execution

Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:

Credit to Participant entering order: $0.001 per share executed

Charge to Participant providing liquidity: $0.0009

Any order that matches against another order of the same Participant: No charge

Routed Orders

Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT: $0.01 per share executed

Any order entered by a Participant that is routed outside of Nasdaq's INET System other than through DOT: $0.0035 per share executed

AMEX-listed ETFs

Order Execution

Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:

Charge to Participant entering order:

Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:

Greater than 60 million shares accessed or routed and 5 million shares provided: $0.0027 per share executed

Greater than 40 million shares but less than 60 million shares accessed or routed and 5 million share executed shares provided: $0.0028 per share executed

Less than 5 million shares provided or less than 40 million shares accessed or routed: $0.0030 per share executed

Credit to Participant providing liquidity:

Average daily shares of liquidity provided through Nasdaq's INET System by the Participant during the month:

Greater than 30 million shares provided or greater than 30 million shares accessed or routed or greater than 50 million shares combined provided, accessed or routed: $0.0025 per share executed

Less than or equal to 30 million shares provided and less than or equal to 30 million shares accessed or routed and less than or equal to 50 million shares combined provided, accessed, or routed: $0.002 per share executed

Any order that matches against another order of the same Participant: $0.00025 per share per side.

Routed Orders

Any order entered by a Participant that is routed outside of Nasdaq's INET System through DOT: $0.01 per share executed

Any order entered by a Participant that is routed outside of Nasdaq's INET System other than through DOT: $0.0035 per share executed

NYSE-listed stocks

Order Execution

Non-Directed Order that accesses the Quote/Order of a market Participant through Nasdaq's INET System:

Credit to Participant entering order: $0.001 per share executed

Charge to Participant providing liquidity: $0.0009

Any order that matches against another order of the same Participant: No charge

Routed Orders

Any order entered by a Participant that is routed outside per of Nasdaq's INET System through DOT: $0.0005 share executed

Any order entered by a Participant that is routed outside of Nasdaq's INET System other than through DOT: $0.0015 per share executed

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On April 22, 2005, Nasdaq entered into definitive agreements to purchase INET, a registered broker-dealer and member of the NASD [3], and operator of

[3] Nasdaq states that, as a member of the NASD, INET is, and remains, subject to all NASD Rules

Continued

the INET System. Nasdaq states that, once formally purchased by Nasdaq, the INET System would immediately become a ''facility'' of a national securities association subject to the standards set forth in Sections 15A [4] and 19(b)(1) [5] of the Act and would be required to operate pursuant to formal system rules approved by the Commission. In order to ensure that such rules are in place at the time of closing, Nasdaq has filed this proposed set of INET System rules for Commission review and approval that includes a description of the INET System, its various features, fees, and order processing methods. Nasdaq proposes that these rules would be implemented immediately upon formal closing of the Nasdaq/INET transaction, and in no event more than two weeks after Commission approval.[6]

The INET System

1. Order Display/Matching System

The INET System allows subscribers to enter market and priced limit orders to buy and sell Nasdaq and exchange-listed securities. According to Nasdaq, such orders may be in round-lots, mixed-lots, or odd-lots of any size up to 999,999 shares. Nasdaq states that INET acts only as an agent on behalf of its subscribers and engages in no proprietary trading save that necessary to correct system errors. Subscribers may enter multiple orders at single or multiple price levels. Subscribers have the option to have a portion of their order held in reserve and not displayed to the marketplace. INET, in turn, makes available to System subscribers and market data vendors a data feed of all displayable orders on both the bid and offer side of the market (excluding reserve size share amounts) for all price levels at which shares are available within its System.

INET currently provides its best top-of-file prices, and other prices, to the National Stock Exchange (''NSX''). In this filing, Nasdaq proposes rules under which INET would be permitted to continue to provide its best-priced orders to the NSX until the end of the third quarter of 2006.[7] At any time prior to that date, Nasdaq may file with the Commission a rule proposal to move the INET System's best-priced orders, and other orders including up to full depth of book, to the Nasdaq Market Center for display, routing, and execution purposes. If filed, Nasdaq states that it would seek immediate effectiveness of the proposal. In addition, INET would continue to accept sub-penny prices in $0.001 increments for securities priced under $1.00 a share. Such sub-penny prices are viewable via the System data feed.

2. Access Standards

Nasdaq states that, to obtain access to the INET System as a system participant, a user must execute an INET subscriber agreement and be a participant in, or have an access arrangement with a participant in, a Commission-registered clearing agency. In addition, the INET subscriber must also agree to:

a. Comply with all applicable rules of the NASD and the Commission; and

b. Accept all INET System trades identified by the System as being effected by the subscriber.

According to Nasdaq, INET also currently provides access to approximately 70 non-NASD member broker-dealers. Nasdaq states that it intends, for a period of time not to exceed 60 days after the formal close of the Nasdaq/INET transaction, to continue to provide such entities with sponsored access to the INET System under generally the same terms and conditions they enjoy today. This would be accomplished through contractual agreements between INET and such subscribers. Nasdaq states that, within 60 days after the formal closing of the Nasdaq/INET transaction, all participants in the INET System must be NASD members.

3. Order Types

The INET System makes available to subscribers several order types. These order types are described below.

Limit Order—an order to buy or sell a stock at a specified price or better.

Market Order—an un-priced order to buy or sell a stock at the market's current best price. A market order may have a limit price beyond which the order shall not be executed.

Reserve Order—a limit order that has both a round-lot displayed size as well as an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than 100 shares, the System would replenish the display portion from reserve up to at least a single round-lot amount.

Pegged Order—a limit order that, after entry, has its price automatically adjusted by the System in response to changes in the national best bid or offer (''NBBO''), as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the NBBO (''Primary Peg'') or the opposite side of the NBBO (''Market Peg''). In addition, Pegged Orders may also establish their pricing relative to the NBBO by the selection of $0.01 offset amounts that would adjust the price of the order by the offset amount selected.

Example Primary Pegged Order

The market is $10.00 bid–$10.01 offer. INET receives a non-route Primary Pegged buy order. INET would post the order at $10.00. If the inside bid moves to $10.01, INET would modify the Pegged Order to the $10.01 bid price. A new time stamp is created at the time of this modification. If a sell order is subsequently entered at $10.01 or lower, the pegged order would execute at $10.01.

Example Market Pegged Order

The market is $10.00 bid–$10.01 offer. INET receives a Market Pegged buy order. INET would post the order at $10.01. If the inside offer moves to $10.02, INET would modify the Pegged Order to the $10.02 offer price. A new time stamp is created at the time of this modification.

Displayed Order—a limit order that is displayed in the System, in whole or in part, and is available for potential execution against all incoming orders until executed in full or cancelled.

Non-Displayed Order—a limit order that is not displayed in the System, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.

Minimum Quantity Order—an order that requires that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of IOC.

Example Minimum Quantity Order

The market is $10.00 bid–$10.01 offer. INET receives an order to buy 1000

applicable to its activities as a broker-dealer. In addition, INET would continue to participate in market surveillance and audit trail programs conducted by Nasdaq, the NASD, and other self-regulatory organizations. INET would continue to act as a counter-party to all trades taking place in its system, for anonymity as well as clearance and settlement purposes. INET would also continue to provide outbound order routing services to other market centers for its subscribers.

[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78s(b)(1).

[6] Nasdaq states that it will provide to the Commission formal written notice of the closing date of the transaction. Such closing date shall be the start date for the calculation of any temporary time period referred to in this filing. Nasdaq states that it will thereafter submit rule filings to include such closing date in its rules.

[7] Nasdaq states that, as is the case today, INET would remain subject to all applicable rules and regulations of the NSX.

shares, Minimum Quantity of 500 shares, at $10.01. This order can only have a time in force of IOC. The INET book has 2 sell orders each for 300 shares at $10.01. INET executed 600 shares at $10.01 (in two lots) and cancels the remaining 400 shares back.

Discretionary Order—an order that has both a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is converted to an IOC order equal in size to the displayed size and priced at the most aggressive price in the discretionary price range when displayed shares become available or an execution takes place at any price within the discretionary price range. The generation of this IOC order is accompanied by the cancellation of the displayed portion of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system would convert all such orders at the same time and priority would be given to the first IOC order(s) that reaches the trading interest on the other side of the market. If an IOC order is not executed in full, the unexecuted portion of the order would be automatically re-posted and displayed in the System book with a new time stamp, its original displayed price, and its original non-displayed discretionary price range.

Example

INET receives a Discretionary buy order, with a displayed limit price of $10.00 and a display quantity of 1000 shares and a discretionary price range of up to $15.00. INET posts the order as 1000 shares at $10.00. Thereafter, another market participant posts another offer to buy at 300 shares at $11.00, creating a buy market as follows:

Display	Reserve	Price	Discretionary price range
300	0	$11.00	None.
1000	0	$10.00	$11.00–$15.00.

Thereafter, another market participant enters a sell order for 500 shares at $11.00. The resulting executions are as follows:

1. 300 shares execute immediately at $11.00.

2. 200 shares to sell at $11.00 is posted to the book.

3. Both the execution at $11.00 and the posting of the display price of $11.00 are events that trigger the processing of the discretionary portion of the Discretionary Order.

4. INET would cancel the 1000 display portion of the Discretionary Order and send an IOC order for 1000 shares priced at $15.00 to the displayed 200 shares priced at $11.00.

5. The 200 shares would execute at $11.00, and the 800 share remainder of the Discretionary Order would be placed back into the INET book at its original order price of $10.00. If there were multiple Discretionary Orders available to interact with the 200 shares, all such orders would be activated at the same time by the INET system and whichever IOC order(s) first reached the 200 shares would get the execution.

4. Time in Force Designations

Orders entered into the INET System may be designated by the entering party to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party. These ''time in force'' designations are described below: [8]

Immediate or Cancel (IOC)—limit orders with this designation execute immediately at the limit price if shares are available. If no shares are available, the orders are immediately cancelled. If partially executed, un-executed remainders of these orders are immediately cancelled.

Market Day or Limit Day (DAY)—limit orders with these designations (or the unexecuted portions of such orders) are held by the INET System and remain available for potential display/execution until 4 p.m. eastern time on the day they are submitted unless cancelled before then by the entering party. If not executed by 4 p.m., the order is cancelled and sent back to the entering party.

Expire Time (ExT)—limit orders with this designation are held by the system for potential execution until the expiration of the specific time period indicated by the entering party, including time periods outside of normal market hours.

Extended Day (XDAY)—limit orders with this designation (or the unexecuted portions of such orders) are held by the INET System and remain available for potential execution until 8 p.m. eastern time.

The INET System operates between the hours of 7 a.m. and 8 p.m. Eastern Time. Orders with the above time in force designations may be entered into the INET System, or previously entered orders cancelled, starting at 7 a.m. eastern time. Only orders with the XDAY designation would be retained by the system after 4 p.m. eastern time, with all other order types being cancelled back to the entering party.

5. Routing

The INET System provides the capability to route orders to other available market centers. Routing functionality is available to System users between the hours of 7 a.m. and 8 p.m. eastern time. In general, the System provides users with five optional routing strategies for exchange-listed securities. These strategies are summarized below:

DOT Immediate (DOTI)

After checking the INET System for available shares, orders are sent directly to the New York Stock Exchange (''NYSE'') via the DOT system. When checking the INET book, the System looks to execute at the better price of either the limit price specified in the order, or the best price displayed at that time at the NYSE. If no liquidity is available in the INET System the order is routed directly to the NYSE via DOT at the limit order price for posting. A similar process is followed for orders in stocks listed on the American Stock Exchange (''AMEX''). This strategy may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.

Example of DOTI Routable Order

The current NBBO is $10.00 bid x $10.02 offer. Offer size is as follows: 300 shares INET displayed, 200 shares INET non-displayed, 100 shares PCX, 200 shares NYSE. Participant A enters a buy order for 1000 shares at $10.02. The System would first IOC INET for 1000

[8] In addition, Nasdaq states that the System also supports On-Open and On-Close order types for orders being routed directly to the NYSE, AMEX, and Nasdaq Market Center.

According to Nasdaq, these orders are not supported or executed within the INET System itself. Instead, these order formats are designed for processing at their destination market.

shares at $10.02. Participant A would execute against 300 shares at $10.02 displayed and the 200 shares non-displayed. The System would route the remaining 500 shares to NYSE. Participant A would receive 200 shares from NYSE. The remaining 300 shares would reside on the NYSE book, per routing instructions.

DOT Alternative (DOTA)

After checking the INET System for available shares, the order would be sent to various available market centers for potential execution. Any remaining un-executed portion would thereafter be sent to the NYSE or AMEX, as appropriate, at the limit order price for posting. This strategy may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.

Example of DOTA Routable Order

The current NBBO is $10.00 bid x $10.02 offer. Offer size is as follows: 300 shares INET displayed, 200 shares INET non-displayed, 100 shares PCX, 200 shares NYSE. Participant A enters a buy order for 1000 shares at $10.02. The System would first IOC INET at $10.02. Participant A would execute against 300 shares at $10.02 displayed and the 200 shares non-displayed. The System would route the remaining shares to PCX. Participant A would receive 100 shares from PCX. The System would then route 400 shares to the NYSE. Participant A would receive 200 shares from the NYSE. The remaining 200 shares would reside on the NYSE book, per routing instructions.

SCAN/STGY/SPDY

In all of these routing options, after checking the INET System for available shares, orders would be sent to various available market centers for potential execution. For all these options, when checking the INET book, the System would look to execute at the price it would send the order to the non-INET destination market center and, if any shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX for posting.

Once returned to the INET book after routing, an order with the SCAN designation would *not* be routed out to an accessible market center that subsequently locks or crosses the SCAN order. Orders with STGY and SPDY would be routed to an accessible market center that subsequently locks or crosses the STGY or SPDY order. While both STGY and SPDY orders would route to locking or crossing markets, the SPDY order would be re-priced by the System to match on then being displayed on the same side of the market by the locking or crossing market center (*i.e.*, a buy order to the bid and a sell to the offer).

With the exception of the Minimum Quantity Order type, all time-in-force parameters and order types may be used with the STGY, SCAN, and SPDY routing options. Nasdaq states that orders routed by INET to another market do not retain time priority with respect to other orders in INET's System and INET continues to execute other orders while the routed order is away at another market. Nasdaq states that, once routed by INET, an order becomes subject to the rules and procedures of the destination market including, but not limited to, short-sale regulation, and order cancellation. According to Nasdaq, orders routed to a destination market that are subsequently returned in whole or in part to the System would have their time priority based on the time they are returned to the System.

Example of STGY Routable Order

The current NBBO is $10.00 bid x $10.02 offer, size 200 shares at the Nasdaq Market Center. INET has a non-display offer of 500 shares at $10.01. Participant A enters an order onto INET to buy 1000 shares at $10.02. The System would first IOC the INET book for any potential orders at or better than the limit price. Participant A would execute 500 shares on INET at $10.01 (the non-display order on the book). The System would then route the order to the Nasdaq Market Center at $10.02. 200 shares execute at the Nasdaq Market Center at $10.02. 300 shares of the order remain unexecuted, and are entered onto the INET book at $10.02. 5 seconds later, PCX enters the market with an offer of $10.02. The System would cancel the order off the book, and route 300 shares at $10.02 to PCX. PCX executes 300 shares at $10.02. Participant A receives an execution for the remaining 300 shares in the order.

Example of STGY Routable Order (Crossed Market)

The current NBBO is $10.01 bid x $10.00 offer. INET has 500 shares on the offer at $10.00. PCX has 300 shares on the offer at $10.00. Participant A enters a market order to buy 1000 shares. The System would price the order at $10.00 and IOC the INET book. Participant A would receive 500 shares at $10.00. The System would route the remaining shares to PCX. Participant A would receive 300 shares at $10.00 from PCX. After attempting to exhaust the quotes, the remaining 200 shares would be posted to the INET book at $10.00.

Example of SCAN Routable Order:

The current NBBO is $10.00 bid x $10.02 offer, size 200 shares at the Nasdaq Market Center. INET has a non-display offer of 500 shares at $10.01. Participant A enters an order onto INET to buy 1000 shares at $10.02. The System would first IOC the INET book for any potential orders at or better than the limit price. Participant A would execute 500 shares on INET at $10.01 (the non-display order on the book). The System would route the order off the book with the remaining shares of the order, 500, to the Nasdaq Market Center at $10.02. 200 shares execute at the Nasdaq Market Center at $10.02. 300 shares of the order remain unexecuted, and are entered onto the INET book at $10.02. 5 seconds later, PCX enters the market with an offer of $10.02. The System would not route the order to PCX, but would keep the order on the INET book, per Participant A's routing instructions.

Example of SPDY Routable Order (Crossed Market)

The current NBBO is $10.01 bid x $10.00 offer. INET has 500 shares on the offer at $10.01. PCX has 300 shares on the offer at $10.00. Participant A enters a market order to buy 1000 shares. The System would price the order at $10.01 and IOC the INET book. Participant A would receive 500 shares at $10.01. The System would route the remaining 500 shares to PCX. Participant A would receive 300 shares at $10.00 from PCX. The remaining 200 shares would be posted to the INET book at $10.01.

Other

Nasdaq states that the System also allows firms to send individual orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX.

6. Execution Algorithm

Nasdaq states that the INET System has an execution algorithm based on price/time priority. For each order, among equally-priced or better-priced trading interest, the System executes against available contra-side displayed share amounts in full, in price/time priority, before then moving to any non-displayed shares which are likewise executed in price/time priority. Below are examples of this algorithm:

Displayed Order

The current NBBO is $10.00 bid x $10.02 offer. Participant A enters a display order on INET to buy 1000 shares at $10.01. NBBO is changed to $10.01 x $10.02. Participant B sees the 1000 share order at $10.01 and enters an

order to sell 500 shares at $10.01. The orders match at $10.01, with 500 shares matched. NBBO remains at $10.01 x $10.02 with the size on the bid decremented to 500 shares, the amount of shares matched.

Limit Order (with Reserve)

The current NBBO is $10.01 bid x $10.02 offer. Participant A enters an order to buy 1000 shares, display 200, at $10.01. INET bid is $10.01, 200 displayed, 800 non-displayed. Participant B enters a display buy order for 1000 shares at $10.01. INET bid is $10.01, 1200 displayed, 800 non-displayed. Participant C enters an order to sell 1500 shares at $10.01. Participant C receives executions against orders as follows: Participant A executes 200 shares at $10.01; Participant B executes 1000 shares at $10.01 (display order receives priority over non-display even though non-display order was there first); Participant A executes 300 shares from non-display portion. Participant C has executed a total of 1500 shares. Participant B has executed all 1000 of its shares. Participant A has 200 shares remaining in its order, and is now displayed, per original instructions.

Routable Order

The current NBBO is $10.00 bid x $10.02 offer, size 200 shares at the Nasdaq Market Center. INET has a non-display offer of 500 shares at $10.01. Participant A enters an order onto INET to buy 1000 shares at $10.02. The system would first IOC the INET book for any potential orders at or better than the limit price. Participant A would execute 500 shares on INET at $10.01 (the non-display order on the book). The System would then route the order off the book with the remaining shares of the order, 500, to the Nasdaq Market Center at $10.02. 200 shares execute at the Nasdaq Market Center at $10.02. 300 shares of the order remain unexecuted, and are entered onto the INET book at $10.02.

7. Clearly Erroneous Trade Procedures

Nasdaq states that currently, INET adjudicates clearly erroneous trade disputes for executions taking place exclusively within its System. While generally reviewing clearly erroneous trade claims in response to subscriber requests, INET currently reserves the right to take action on its own initiative if it determines that a trade is clearly erroneous and needs to be modified or cancelled. INET currently also reserves the right to refuse to review potentially erroneous transactions that are brought to its attention more than 20 minutes after execution. In the normal course, INET limits its clearly erroneous review to INET System trades that execute at prices that are certain percentages away from the National Best Bid/Offer at the time of execution. These percentages are provided below:

Execution Price Range Away From NBBO

$3 and under: 10%.
Over $3 and under $10: 5%.
$10 to $30: 3%.
Over $30: $1 or more.

Nasdaq is proposing to continue the above process for a period of 60 days after the formal close of the Nasdaq/INET transaction. During that interim period, Nasdaq states that it would prepare to incorporate INET into the current clearly erroneous process of Nasdaq and Brut, which is governed by NASD Rule 11890. Nasdaq states that this interim period would ensure that sufficient notice is provided to System subscribers about their rights and obligations related to clearly erroneous trades under NASD Rule 11890, as well as allow Nasdaq to train incoming INET staff to properly process such requests. Prior to 60 days after the formal close of the Nasdaq/INET transaction, Nasdaq states that it would file with the Commission a rule proposal making INET's clearly erroneous process specifically subject to NASD Rule 11890. Nasdaq states that it will seek immediate effectiveness of that filing.

8. Other System Standards

Nasdaq is also proposing to establish standards regarding operational issues between the Nasdaq Market Center and INET. For example, Nasdaq is proposing rules for the INET System codifying standards regarding the obligation of users to honor system trades and the removal of users for failing to maintain a required clearing relationship.[9] While Nasdaq is proposing that INET have in place at closing a general limitation of liability rule, Nasdaq is also proposing that INET continue, for a period of time not to exceed 60 days after the formal close of the Nasdaq/INET transaction, to have the discretion to accommodate users of the System for losses arising out of the System or its use. Before the end of that time period, Nasdaq states that it will file a rule proposal with the Commission so that the System's future accommodation of users would be subject to the same standards already in place for the Nasdaq Market Center and Nasdaq's Brut Facility.[10] Nasdaq is also proposing to establish rules governing the anonymity provided by the system, as well as rules governing minimum quote increments. Nasdaq states that the System's anonymity standards and proposed minimum quote increment standards are substantially similar to those in place in the Nasdaq Market Center and Nasdaq's Brut Facility and also provides for allowing sub-penny quotes in securities priced under $1.00.

9. Pricing

Nasdaq is also proposing the creation of a fee and rebate schedule for the INET System. Nasdaq states that, with exception of eliminating fee rates discounts based on the use of the services of the Instinet broker-dealer, this fee and rebate schedule is the same as the one applicable to current INET subscribers.[11] Nasdaq proposes that this fee schedule remain in place for a period of time not to exceed 60 days after the formal close of the Nasdaq/INET transaction. Before the termination of such 60-day period, Nasdaq will file with the Commission an integrated fee and rebate structure governing the use of all Nasdaq's main trading systems (*i.e.*, the Nasdaq Market Center, Nasdaq's Brut Facility, and Nasdaq's INET System).

10. Trade-Through Compliance and Locked and Crossed Markets

Nasdaq states that, in order to ensure compliance with the trade-through rule for listed securities,[12] the INET system checks the prices of orders in listed securities that are not made eligible for routing by the entering party before and after an order is entered in the System. The process is described in further detail below:

At Order Entry—At the time of order entry, every order would be checked to ensure that it does not lock or cross the market, or cause an execution at a price that would constitute a violation of the trade-through rule. If an order locks the market, it would be turned into a non-display order so as not to quote a locked market. If an order crosses the market, or would cause a trade-through violation, it would be re-priced to the current low offer (for bids) or to the current best bid (for offers), and turned into a non-display order so as to not quote a locked market. Any non-display order that crosses the market would be re-priced to the current low offer (for bids) or to the current best bid (for offers).

[9] *See* proposed NASD Rules 4958 and 4959.

[10] *See* NASD Rule 4705(j) and proposed NASD Rule 4964.

[11] *See* proposed NASD Rule 7010(w).

[12] *See* Section (8)(d) of the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Act.

Example

The National Best Bid in a listed security is $83.55. INET Subscriber enters a non-route order to sell at $83.54. The INET system would automatically re-price the order to $83.55 and change it to non-display.

After Order Entry—An non-routable order entered for display would not be affected by the trade-through rule after it is accepted. To prevent trade-throughs, however, a non-display non-routable order however, may be cancelled from the INET book with the reason code if the market moves through the price of the order after the order is accepted.

Example

The National Best Bid in a listed security is $83.55. INET Subscriber enters a non-display non-route order to sell at $83.55. The National Best Bid in the security becomes $83.56. The non-display order to sell at $83.55 would be cancelled since it cannot be executed without causing a trade-through violation.

Nasdaq states that INET's re-pricing and conversions to non-display of orders are done with the knowledge of System subscribers and only takes place in connection with orders that subscribers have elected not to make eligible for routing.

11. Integration Plan

Upon the closing of the INET transaction, Nasdaq will be the owner and operator of three separate trading systems, the Nasdaq Market Center, Nasdaq's Brut Facility, and Nasdaq's INET System. For a period of time after the close, Nasdaq states that it will continue to separately operate these systems, with each system providing distinct order-display, execution, and routing services. Orders entered and displayed in a particular system shall have time-priority only with regard to other orders in that same system. For a period of time ending no later than September 30, 2006, the INET System would continue to post its top-of-file quotes through the facilities of NSX.

Nasdaq's long-term vision is to have all of its systems integrated into a single technology platform that would further enhance execution quality for market participants. As part of that consolidation plan, soon after the formal close of the Nasdaq/INET transaction, Nasdaq states that it anticipates that it will merge the INET broker-dealer into Nasdaq's Brut broker-dealer and that Brut as a single broker dealer would operate both ECNs as separate systems, with separate order processing and execution. As such, the NYSE would continue to serve as the designated examining authority for financial responsibility purposes for Nasdaq's broker-dealer. Nasdaq states that there would continue to be no priority in one system for orders entered into the other.

According to Nasdaq, the next step in its current plan is to combine all of its three execution systems into a single trading platform. Nasdaq states that it expects to accomplish this process sometime before the end of the third quarter of 2006. As part of this process, Nasdaq would also combine all three of its system books into a single integrated book where all orders interact and have time-priority against each other. Nasdaq anticipates transitioning quotation and execution activity from its systems and other market centers to its single system in phases.

Once Nasdaq's single integrated system is operational and fully populated, Nasdaq states that it expects to continue to operate a broker-dealer to act as Nasdaq's outbound access broker dealer to reach orders displayed in other market centers.[13]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[14] in general, and Section 15A(b)(6) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Nasdaq states that its proposed operation of the INET System must be viewed against the backdrop of today's competitive and dynamic market structure. According to Nasdaq, the Commission's action in approving the Order Handling Rules, Regulation ATS, the creation of NASD's Alternative Display Facility (''ADF''), and the recent approval of Regulation NMS[16] provide increased opportunities for market participants to compete vigorously for the trading of U.S. equity securities.

Nasdaq states that the combination of Regulation NMS's articulation of a framework that obligates market participants to seek the best price and the availability of technology to display and reach that price ensures that all market centers will be able to compete by offering the best price. Nasdaq believes that the dynamic market structure and the incentives that led to the creation of entities such as the INET System ensure that all market centers will continue to innovate and compete to serve their customers, and that new competitors will be able to enter if they believe it would be profitable for them to do so. In this dynamic competitive environment, Nasdaq believes that its operation of the INET System will not place any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) 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:

[13] Changes to text made pursuant to phone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and John C. Roeser, Assistant Director, Division of Market Regulation, Commission, on November 2, 2005.

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] *See* Securities Exchange Act Release Nos. 37619A (August 29, 1996), 61 FR 48290 (September 6, 1996) (Order Handling Release); 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (Regulation ATS Release); 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (ADF Release); and 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS Release).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–128 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–128. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–128 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22227 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52700; File No. SR–NASD–2005–120]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Dissemination of Information on TRACE-Eligible Securities Transactions

October 28, 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 14, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is proposing to amend Rule 6250 of the Trade Reporting and Compliance Engine (''TRACE'') rules to disseminate immediately upon receipt transaction information on TRACE-eligible securities (except transactions effected pursuant to Rule 144A of the Securities Act of 1933 (''Rule 144A transactions'')). The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD'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, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD is proposing to amend Rule 6250 to eliminate all delays in the dissemination of information on transactions in TRACE-eligible securities (''TRACE information''). The proposed amendments to NASD Rule 6250 provide that TRACE information on all transactions (except on Rule 144A transactions) be disseminated immediately upon receipt of the transaction report. The proposed rule change represents the last stage of a series of NASD regulatory actions to gradually increase transparency, by phases, for all transactions in TRACE-eligible securities (except Rule 144A transactions) for the benefit of all market participants.[3] The proposed amendments also meet the Commission's expectations as set forth in its September 2004 approval order for the third phase of TRACE dissemination (''Phase III'') (''Phase III Approval Order'').[4] In the Phase III Approval Order, the Commission stated that it expected NASD to submit a proposal eliminating the remaining delays in TRACE information dissemination not later than November 1, 2005.

Background

Prior to the approval of the initial TRACE Rule 6200 Series, NASD structured TRACE to phase in the dissemination of TRACE information gradually. As of July 1, 2002, when TRACE became operational, it was agreed that public dissemination of TRACE information on these corporate bond transactions would be implemented over three phases.[5]

Bond Transaction Reporting Committee. In addition, before TRACE became operational on July 1, 2002, NASD formed the Bond Transaction Reporting Committee (''BTRC'') to

[3] Information on Rule 144A transactions in TRACE-eligible securities is not disseminated because securities sold pursuant to Rule 144A are subject to restrictions on transfer and are not freely tradable in the public secondary market.

[4] *See* Securities Exchange Act Release No. 50317 (September 3, 2004), 69 FR 55202 (September 13, 2004).

[5] NASD proposed that dissemination of TRACE information be implemented in phases as the TRACE Rules were developed. *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (order approving NASD's proposed rules creating TRACE, the corporate bond trade reporting and transaction dissemination facility) (''SEC 2001 Approval Order''). In the SEC 2001 Approval Order, the SEC discussed and approved the NASD's proposal to increase transparency in phases. *See id.* at 8133.

advise NASD on liquidity issues and how dissemination of TRACE information should be increased over time to improve transparency in the corporate bond market.[6] The BTRC reviewed TRACE statistical data and econometric analyses as well as other information prior to developing recommendations for improving and broadening TRACE transparency. The increases in transparency that took place in Phases II and III, as discussed in greater detail below, as well as this final phase providing for full immediate dissemination of TRACE information on all transactions (except Rule 144A transactions) were all recommended by the BTRC.

Phase I. During Phase I, which began on July 1, 2002, TRACE information (except on Rule 144A transactions) was disseminated immediately for the larger and generally higher-credit quality issues—Investment Grade debt securities having an initial issue of $1 billion or greater—and 50 liquid Non-Investment Grade (''high-yield'') securities disseminated under the Fixed Income Pricing System (''FIPS'') that were transferred to TRACE.[7] Under these criteria, NASD disseminated TRACE information on approximately 550 securities by the end of 2002.

Phase II. The SEC approved the Phase II proposal on January 31, 2003.[8] Phase II dissemination expanded the universe of transparent transactions to include all transactions (except Rule 144A transactions) in the following two groups of Investment Grade securities: (1) any TRACE-eligible security that is Investment Grade (*i.e.*, is rated by Moody's[9] as ''A3'' or higher, and by S&P's[10] as ''A−'' or higher) and has an original issue size of $100 million or greater (''Single A Transactions''); and (2) 120 TRACE-eligible securities rated ''Baa/BBB'' at the time of designation, with the bonds being identified in three subgroups to represent the ''Baa/BBB'' credit spectrum (*i.e.*, ''Baa1/BBB+,'' ''Baa2/BBB,'' and ''Baa3/BBB−'') (''Triple B Transactions'').[11] In addition, dissemination would continue with respect to the Investment Grade bonds and the group of 50 liquid Non-Investment Grade TRACE-eligible securities subject to dissemination during Phase I.

Phase II was implemented in two stages. On March 3, 2003, NASD began disseminating TRACE information on the Single A Transactions, and, on April 14, 2003, NASD began disseminating TRACE information on the Triple B Transactions. As Phase II was implemented, the number of disseminated bonds increased to approximately 4,200 bonds.

Phase III. The SEC approved NASD's Phase III proposal on September 3, 2004.[12] Phase III provided for immediate dissemination of TRACE information on all TRACE-eligible securities transactions (except on Rule 144A transactions) except for: (1) new issues rated Baa/BBB or below, which would be subject to delayed dissemination of two or ten business days immediately following issuance; and (2) larger transactions (over $1 million) in Non-Investment Grade TRACE-eligible securities, where the security traded on average less than one time per day over a specified period, which would be subject to delayed dissemination of two or four business days.

Phase III was implemented in two stages. Stage One was implemented on October 1, 2004, and TRACE information on substantially all TRACE-eligible securities transactions that were subject to immediate dissemination under the Phase III rule amendments began to be disseminated on that day. Stage Two, implementing dissemination of TRACE information on TRACE-eligible securities transactions subject to delayed dissemination, took effect on February 7, 2005. Under Phase III as fully implemented, approximately 99% of all transactions and 95% of par value in the TRACE-eligible securities market are disseminated immediately.

In its Phase III Approval Order, the SEC noted that the TRACE information dissemination delays for certain high-yield transactions and new issue transactions rated Baa/BBB or below ''may unnecessarily restrict the availability of this transaction information to investors in this market.''[13] Moreover, the Commission noted that two studies commissioned by NASD to address the relationship between transparency and liquidity ''found no conclusive evidence that TRACE transparency has adversely affected liquidity.''[14] ''Accordingly, the Commission expects that, not later than November 1, 2005 (nine months after the effective date of Stage Two), the NASD will submit a proposed rule change eliminating the delays in TRACE information dissemination.''[15]

BTRC Recommendations Regarding Proposed Rule Change. In its Phase III proposed rule filing, NASD stated that it intended to review the trading and liquidity in TRACE-eligible securities during the implementation of Stages One and Two of Phase III.[16] In addition, as part of this review process, NASD stated that, not later that nine months from Stage Two implementation, NASD would ask the BTRC to reconvene to review the rule and make recommendations to the NASD Board of Governors. Consistent with this stated intention, after Phase III was fully implemented, the BTRC met several times to review TRACE statistical data, econometric analyses and other information, and to discuss the impact of Phase III transparency on liquidity in the corporate bond market. As a result of this review process, neither the BTRC nor NASD found conclusive evidence that Phase III transparency adversely affected corporate bond market liquidity. On September 12, 2005, the BTRC recommended that information on all transactions in TRACE-eligible securities (except Rule 144A transactions) be disseminated immediately upon NASD's receipt of the transaction report. In addition, the BTRC recommended that NASD and the SEC continue to monitor the part of the fixed income market made up of transactions in TRACE-eligible securities and, if NASD or the SEC

[6] The role and composition of the BTRC is explained fully in the SEC 2001 Approval Order. *See id.*

[7] The terms ''Investment Grade'' and ''Non-Investment Grade'' as used herein are defined, respectively, in NASD TRACE Rules 6210(h) and 6210(i). The FIPS 50 were 50 Non-Investment Grade securities designated under the now rescinded FIPS Rules for limited price dissemination.

[8] *See* Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (order approving the Phase II proposal). On March 17, 2003, NASD proposed minor modifications to the Phase II proposal, which were effective upon filing. *See* Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003).

[9] Moody's Investors Service, Inc. (''Moody's'') is a nationally recognized statistical rating organization (''NRSRO''). Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.

[10] Standard & Poor's (''S&P''), a division of the McGraw-Hill Companies, Inc., is an NRSRO. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

[11] Baa, Baa1, Baa2, and Baa3 are ratings of Moody's; BBB+, BBB, and BBB− are ratings of S&P.

[12] *See* Phase III Approval Order.

[13] Phase III Approval Order, 69 FR at 55204.

[14] *Id.* (footnote omitted).

[15] *Id.*

[16] Phase III Approval Order, 69 FR at 55203.

identify evidence that immediate dissemination has a negative impact on the liquidity of the fixed income markets, the BTRC encourages NASD and the SEC to re-consider immediate dissemination of TRACE information.

Proposed Rule Change

Based on NASD's experience with TRACE of more than three years, specifically the experience gained from its measured, gradual implementation of full transparency, it is NASD's strong belief that immediate dissemination of TRACE information on all TRACE transactions (except Rule 144A transactions) is warranted. This belief is consistent with the BTRC's recommendation of September 12, 2005 as well as the Commission's expectation set forth in the Phase III Approval Order. Accordingly, NASD proposes that TRACE information on *all* transactions in TRACE-eligible securities (except Rule 144A transactions) be disseminated immediately upon receipt of the transaction report. In addition, NASD intends to continue to monitor the effects of transparency on the corporate bond market.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 30 days following Commission approval. The effective date will be not later than 30 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve transparency in the corporate debt market and facilitate price discovery for the benefit of investors and all participants in the debt securities markets in furtherance of the public interest and for the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[17] 17 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD 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–NASD–2005–120 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–120. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–120 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6137 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52705; File No. SR–NASD–2004–013

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 3, To Amend NASD Rules for Mediation Proceedings

October 31, 2005.

I. Introduction

On January 23, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, NASD Dispute Resolution, Inc., filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to simplify the language of the mediation portion of the NASD Code of Arbitration Procedure (''Code'') and to reorganize those provisions into a separate code for mediations (''Mediation Code'').[3]

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As explained in more detail below, the proposed Mediation Code is one of three NASD rule proposals that, taken together, would simplify the language of and reorganize the Code. *See also* Securities Exchange Act Rel. No. 51856 (June 15, 2005); 70 FR 36442 (June 23, 2005) (proposing to revise and create a separate code for NASD

Continued

Amendments Nos. 1 and 2 were filed on January 3, 2005 and April 8, 2005, respectively.[4] Notice of filing of the proposed rule change and Amendments Nos. 1 and 2 were published for comment on June 23, 2005.[5] The Commission received one comment letter on the proposal.[6] NASD has filed Amendment No. 3 to change the numbering of the proposed Mediation Code and to make other non-substantive revisions, in order to facilitate approval of the proposed rule change[7] prior to the approval of the two other rule filings relating to the revision and reorganization of the Code. This order approves the proposed rule change and Amendments Nos. 1 and 2 thereto, and issues notice of and grants accelerated approval to Amendment No. 3.

II. Description of the Proposed Rule Change

A. Description of the Proposed Rule Change

This rule filing is part of a comprehensive plan to simplify and reorganize NASD's dispute resolution rules. NASD has proposed to rewrite the Code using plain English, in accordance with the Commission's plain English guidelines. In addition, it has proposed to reorganize the Code in a more logical, user-friendly way by, among other things, creating two separate codes for customer and industry arbitrations, and one for mediations. Once approved, the three new codes will replace the current NASD Code in its entirety.

Although NASD is proposing to implement several substantive rule changes to its arbitration rules, as described in the Customer Code and Industry Code rule filings,[8] NASD believes it has not proposed any substantive changes to the current rules governing mediations, apart from adding a definitions rule. The text of the proposed Mediation Code, including the technical changes proposed in Amendment No. 3, is available on the NASD Web site at *http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_009003&ssSourceNodeId=801*.

1. Reorganization

NASD believes that maintaining three separate codes will make it easier for parties to find the rules that apply to their disputes. NASD will maintain electronic versions of each code on its Web site, *http://www.nasd.com*, and will make paper copies available upon request.

In keeping with the current NASD rule numbering system, each of the three codes will be numbered in the thousands, and major sections will be numbered in the hundreds. Individual rules within those sections will be numbered in the tens (or ones, if necessary). The current method for numbering and lettering paragraphs within individual rules will remain unchanged. The Customer Code will use the Rule 12000 series, the Industry Code will use the Rule 13000 series, and the Mediation Code ultimately will use the Rule 14000 series, all of which are currently unused. NASD intends to reserve the Rule 10000 series, which is currently used for NASD's dispute resolution rules, for future use.

2. Proposed Definitions Rule

The Mediation Code will include a comprehensive definitions rule that will define terms used throughout the Mediation Code. NASD believes that this rule will provide useful clarification for parties and mediators.

3. No Substantive Changes

NASD believes that, with the exception of adding a definitions rule, the Mediation Code will not include any substantive changes to NASD's current rules governing mediations.

B. Amendment No. 3

Originally, NASD anticipated that the proposed Mediation Code would be approved at the same time as the Customer Code and Industry Code. Therefore, NASD proposed numbering the Mediation Code using the 14000 series. However, in order to facilitate approving the proposed Mediation Code before the Customer Code and Industry Code, NASD proposes in Amendment No. 3 to change its numbering and to make other non-substantive changes, such that it is consistent with the current Code. NASD intends to propose to renumber the approved Mediation Code as the 14000 series when the Customer Code and Industry Code are approved and become effective.

Specifically, the changes proposed in Amendment No. 3 are as follows:

- The current NASD mediation rules, current Rules 10401–10407 of the Code, would be deleted in their entirety. They would be replaced by Rules 14100–14109 of the proposed Mediation Code, which would be renumbered as Rules 10401–10410, to remain consistent with the numbering in the current Code. NASD intends to propose to renumber the Mediation Code in the NASD Manual as the 14000 Series when the Customer Code and Industry Code are approved by the Commission.[9]
- Proposed Rule 10401(g) of the Mediation Code defines ''NASD Customer Code.'' This paragraph would be reserved until the Customer Code is approved. NASD intends to propose to reinsert the definition into the Mediation Code at that time.
- Proposed Rule 10401(h) of the Mediation Code defines ''NASD Industry Code.'' This paragraph would be reserved until the Industry Code is approved. NASD intends to propose to reinsert the definition into the Mediation Code at that time.
- In proposed Rule 10405(b), the phrase ''NASD Code of Arbitration Procedure'' would replace ''NASD Customer Code'' or ''NASD Industry Code.'' NASD intends to propose to reinsert those terms when the Customer Code and Industry Code are approved.
- In proposed Rule 10406(b), the term ''adjournment'' would replace the term ''postponement,'' consistent with the current Code. NASD intends to propose to change the term back to ''postponement'' when the Customer Code and Industry Code are approved.
- In proposed Rule 10407(c), references to ''Rule 10312(a), (b), and (c) of the NASD Code of Arbitration Procedure'' would replace references to ''NASD Customer Code Rule 12408'' or ''NASD Industry Code Rule 13408.'' NASD intends to propose to change the reference back to ''NASD Customer Code Rule 12408'' or ''NASD Industry Code Rule 13408,'' as appropriate, when the Customer and Industry Codes are

arbitration rules pertaining to customer disputes (''Customer Code'')); Securities Exchange Act Rel. No. 51857 (June 15, 2005); 70 FR 36430 (June 23, 2005) (proposing to revise and create a separate code for NASD arbitration rules pertaining to industry disputes (''Industry Code'')).

[4] Amendment No. 1 deleted a provision that was inadvertently included in the initial rule filing. This provision pertained to a mediator's disqualification as an expert in any pending or future proceeding related to the subject matter of the mediation, and the unavailability of the mediator's documents in such a proceeding. Amendment No. 2 made certain conforming changes also proposed in the other rule filings relating to the revision and reorganization of the Code. Specifically, it added references in the definitions rule to NASD's By-laws and clarified the definition of ''quorum'' for purposes of meetings of the National Arbitration and Mediation Committee, consistent with the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

[5] *See* Securities Exchange Act Rel. No. 51855 (June 15, 2005); 70 FR 36440 (June 23, 2005).

[6] *See* letter to Jonathan G. Katz, Secretary, Commission, from Pace Investor Rights Project, by Jill I. Gross and Barbara Black, dated July 14, 2005 (''Pace Letter'').

[7] NASD has requested accelerated approval for Amendment No. 3. Telephone Conversation with Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution, Inc. (Oct. 19, 2005).

[8] *See supra* note 3.

[9] The Commission notes that approval of the proposed Mediation Code does not predispose the Commission to approving the proposed rule changes relating to the Customer Code or Industry Code.

approved. These cross references pertain to disclosures mediators are required to make in connection with interests, relationships, or circumstances which might influence their objectivity and impartiality.

C. Comment Summary

The Commission received one comment letter on the proposed Mediation Code, in which the Pace Investor Rights Project endorsed the proposed rule change because it preserves the existing NASD mediation system, while allowing individual investors to better understand the mediation rules through plain English.[10] Pace generally supports the mediation of securities disputes and cites Professor Jill Gross for her conclusion in a forthcoming article that mediation is fair to the individual investor because it maximizes party control over the process and offers procedural justice at relatively low cost, among other things.[11]

III. Discussion and Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [12] and, in particular, the requirements of Section 15A of the Act [13] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 15A(b)(6) of the Act,[14] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[15] The Commission believes that proposed rule change, as amended, accomplishes these goals by improving the readability, accessibility, and therefore usability of procedures that establish an alternative, voluntary, and potentially low-cost forum for dispute resolution in the securities industry.

The Commission believes that there is good cause for approving Amendment No. 3 prior to the 30th day after publication in the **Federal Register**. The proposed rule change and Amendments Nos. 1 and 2 thereto previously have been published for comment and have been available on NASD's Web site since their filing with the Commission. Amendment No. 3 proposes non-substantive, technical changes to the proposed rule change, consistent with the current Code, in order to facilitate approval of the proposed Mediation Code. Accelerated approval of Amendment No. 3 will allow parties to more quickly utilize the reorganized and revised Mediation Code. Based on the above, the Commission finds good cause, consistent with Section 15A(b)(6) and Section 19(b)(2) of the Act, for approving Amendment No. 3 prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2004–013. The 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 filing will also be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–2004–013 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6140 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[10] Pace Letter.

[11] *Id.*

[12] 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).

[13] 15 U.S.C. 78*o*–3.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] *Id.*

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Council; Public Meeting

The U.S. Small Business Administration Wisconsin District Advisory Council will be hosting a meeting on Tuesday, November 15, 2005, to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. The meeting will be held at the U.S. Small Business Administration, Wisconsin District—Milwaukee, 310 West Wisconsin Avenue, Suite 400, Milwaukee, Wisconsin.

Anyone wishing to attend must contact Cindy Merrigan in writing or by fax. Cindy Merrigan, U.S. Small Business Administration, 740 Regent Street, Suite 100, Madison, Wisconsin 53715, phone (608) 441–5560, fax (202) 481–0815, e-mail: *cindy.merrigan@sba.gov*.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–22086 Filed 11–4–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Exemptions for Air Taxi and Commuter Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: 14 CFR part 298 requires air carrier operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators. In order to be exempted from this requirement, such operators must apply for exemption with the DOT. This collection is used to ensure that affected companies comply with the requirements under this regulation.

DATES: Please submit comments by December 7, 2005.

ADDRESSES: Judy Street on (202) 267–9895.

FOR FURTHER INFORMATION CONTACT:

Federal Aviation Administration (FAA)

Title: Exemptions for Air Taxi and Commuter Air Carrier Operations.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0633.

Forms(s): OST Form 4507.

Affected Public: A total of 2,040 air taxi and commuter operators.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: Approximately 0.5 hours per response.

Estimated Annual Burden Hours: An estimated 1,026 hours annually.

Abstract: 14 CFR Part 298 requires air carrier operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators. In order to be exempt from this requirement, such operators must apply for exemption with the DOT. This collection is used to ensure that affected companies comply with the requirements under this regulation.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 28, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–22080 Filed 11–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: 14 CFR part 121, Appendices I and J, require specified aviation employers to implement FAA-approved antidrug and alcohol misuse prevention programs and conduct testing of safety-sensitive employees. To monitor compliance, institute program improvements, and anticipate program problem areas, the FAA receives report from the aviation industry.

DATES: Please submit comments by December 7, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities.

Type of Request: Renewal of an approved collection.

OB Control Number: 2120–0535.

Forms(s): None.

Affected Public: A total of 6,602 air carriers.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: Approximately 3.5 hours per response.

Estimated Annual Burden Hours: An estimated 22,768 hours annually.

Abstract: 14 CFR Part 121, Appendices I and J, require specified aviation employers to implement FAA-approved antidrug and alcohol misuse prevention programs and conduct testing of safety-sensitive employees. To monitor compliance, institute program improvements, and anticipate program problem areas, the FAA receives reports from the aviation industry.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued in Washington, DC, on October 28, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–22081 Filed 11–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–61]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 17, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2005–22747] 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.

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: Kenna Sinclair (425–227–1556), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 1, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions For Exemption

Docket No.: FAA–2005–22747.

Petitioner: The Boeing Company.

Sections of 14 CFR Affected: 121.221(f)(1), 121.221(f)(2), 121.221(f)(3), and 121.223.

Description of Relief Sought: Relief from the design and performance requirements regarding fire protection systems for the main deck cargo compartment on Boeing Model 747–400 large cargo freighters.

[FR Doc. 05–22128 Filed 11–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

National Technical Assistance Center for Senior Transportation; Solicitation for Proposals

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice; request for proposals.

SUMMARY: This solicitation is for proposals from national non-profit organizations for a cooperative agreement to develop and implement a National Technical Assistance Center for Senior Transportation (NTACST). The major goal of the NTACST is to assist local communities and states in the expansion and provision of transportation services for older adults. This cooperative agreement is a five year award. The first year of the cooperative agreement is for two million dollars ($2,000,000). Subsequent funding is authorized at one million dollars ($1,000,000 per year) in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEAU–LU); actual funding will be based on annual appropriations.

DATES: Proposals must be submitted electronically by December 22, 2005.

ADDRESSES: Proposals should be submitted electronically to *http://www.Grants.Gov.* Grants.Gov allows organizations to electronically find and apply for competitive grant opportunities from all Federal grant-making agencies. Grants.Gov is the single access point for over 1,000 grant programs offered by the 26 Federal grant-making agencies. Proposals can also be submitted in hard copy to United We Ride Office, 400 7th Street, SW., Room 9114, Washington, DC 20590.

DATES: All proposals must be postmarked by midnight December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Bryna Helfer at (202) 366–1663; fax: (202) 366–3136; *unitedweride@fta.dot.gov.*

SUPPLEMENTARY INFORMATION: Section 3016 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU); PL 109–059, authorized a National Technical Assistance Center for Senior Transportation (NTACST) is under 49 U.S.C. 5314(c) as follows:

(1) *Establishment.* The Secretary shall award a cooperative agreement grant to a national not-for-profit organization for the establishment and maintenance of a NTACST.

(2) *Eligibility.*An organization shall be eligible for a cooperative agreement under paragraph (1) if the organization: (A) Focuses significantly on serving the needs of the elderly; (B) has demonstrated knowledge and expertise in senior transportation policy and planning issues; (C) has affiliates in a majority of the states; (D) has the capacity to convene local groups to consult on operation and development of senior transportation programs; and (E) has established close working relationships with the Federal Transit Administration (FTA) and the Administration on Aging (AoA).

(3) *Use of Funds.* The NTACST established under this section shall: (A) Gather best practices from throughout the nation and provide such practices to local communities that are implementing senior transportation programs; (B) work with teams from local communities to identify how the communities are successfully meeting the transportation needs of senior citizens and identifying any gaps in services in order to create a plan for an integrated senior transportation program; (C) provide resources on ways to pay for senior transportation services; (D) create a Web site to publicize and circulate information on senior transportation program; (E) establish a clearinghouse for print, video, and audio resources on senior mobility; and (F) administer the demonstration grant program established under paragraph (4).

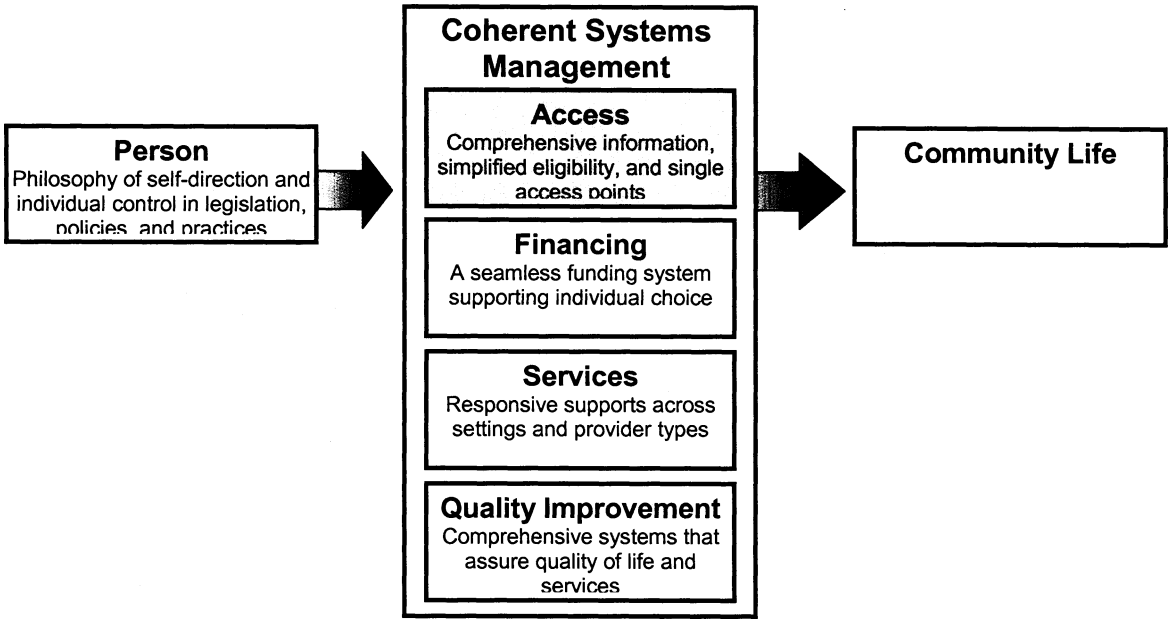
(4) *Grants Authorized.* (A) In General.—The NTACST established under this section, in consultation with the Federal Transit Administration, should award senior transportation demonstration grants to: (i) Local transportation organizations, (ii) state agencies, (iii) units of local government, and (iv) nonprofit organizations. (B) Use of Funds.—Grant funds received under this paragraph may be used to: (i) Evaluate the state of transportation services for senior citizens, (ii) recognize barriers to mobility that senior citizens encounter in their communities, (iii) establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens, (iv) identify future transportation needs of senior citizens within local communities, and (v) establish strategies to meet the unique needs of healthy and frail senior citizens.

I. Funding Opportunity Description

The purpose of this cooperative agreement is to develop and implement a National Technical Assistance Center for Senior Transportation (NTACST). The major goal of the NTACST is to assist local communities and states in the expansion and provision of transportation services for older adults. To accomplish this goal, a series of steps is required, so this request for proposals is structured around a four-step process to:

- Perform a detailed needs assessment to uncover the most pressing areas that communities require for older adult transportation technical assistance;
- Develop a plan for the NTACST that includes staff, resources and information technology infrastructure;
- Implement the NTACST;
- Evaluate, improve and enhance the quality of services provided by the NTACST.

The NTACST will utilize the framework for coherent systems management, used by Aging and Disability Resource Centers (the access component) and the Centers for Medicare and Medicaid Real Choice Systems Change Grants.



These components provide a framework to build a needs assessment and technical assistance program for older adult transportation services.

The NTACST will follow a number of strategies in its development, especially coordination, empowerment, knowledge management and person-centered technical assistance. The NTACST will coordinate with other technical assistance initiatives related to senior mobility and human service transportation to ensure a coordinated approach in this area. In addition, all efforts of the NTACST should ensure consumer input and involvement such that all technical assistance has a person centered, self-determination and independence focus. NTACST personnel will engage early and often with technical assistance recipients to ensure knowledge is transferred and relationships are developed. This information and referral system is meant to be a key focal point to disseminate models, best practices and develop successful demonstration sites for innovations in older adult transportation services and systems. This project will entail creative, engaging and collaborative public and private partnerships at all levels—local, tribal, state and Federal.

Background

The forecasted increase in older adult population concentrations in many states underscores the need for more transportation services as communities strive to find ways to help older persons stay healthy, connected to the community and able to age in place. The latest information on key demographic highlights [1] show:

- The older population (65+) numbered 35.6 million in 2002, an increase of 3.3 million or 10.2 percent since 1992 and, by the year 2030, the older population will more than double to 71.5 million.
- The number of Americans aged 45–64 who will reach 65 over the next two decades increased by 38 percent during this decade.
- Older adults may face income difficulties with median incomes of older persons in 2002 of $19,436 for males and $11,406 for females.
- The key to aging in place is retaining independence and adapting in the face of growing chronic illness. Health status is generally expected to improve, but many older adults will experience one or more disability. In the future, older adults will generally be in better health than their counterparts today, due in large part to better health practices throughout their lives (National Academy on aging, 1994).
- There is an accelerating trend of decreasing disability rates, and the functional limitations that do exist have become less severe. But, increases in life expectancy will create a dramatic increase in the number of older adults with disabilities. Conservative projections estimate a 68 percent increase in the number of older adults with disabilities between 1990 and 2020.
- In 2000, 73 percent of individuals 65 years of age and older lived in suburban and rural areas.[2]

[1] Principle sources of data for the Profile are the U.S. Bureau of the Census, the National Technical assistance center on Health Statistics, and the Bureau of Labor Statistics. The highlights incorporate the latest data available as of 12/03 but not all items are updated on an annual basis.

[2] Ibid.

Thus, the need for mobility assistance to enable independence, especially public transportation services, increases with age and disability level. Many older adults prefer to age in place, despite mobility challenges. The car has made suburban and rural living practical, and contributed to a decline in public transportation and walking (Transportation Research Board, 2004). Mobility will be a significant challenge for this dispersed older population. Therefore, demand for transportation services is expected to skyrocket with the above noted demographic trends. These facts underscore the need for immediate attention to infrastructure and service investments for older adults and individuals with disabilities.

In recognition of the fundamental importance of senior mobility and human service transportation and the continuing need to enhance coordination, President Bush issued an Executive Order on Human Service Transportation Coordination (EO) directing multiple Federal departments and agencies to work together to ensure that transportation services are seamless, comprehensive and accessible.[3] Secretaries from the Departments of Transportation, Health and Human Services, Labor, Education, Interior, Housing and Urban Development, Agriculture, Veterans Affairs, the Commissioner of the Social Security Administration, the Attorney General and the Chairperson of the National Council on Disability are members of the new interagency Coordinating Council on Access and Mobility (CCAM).

Specifically, the CCAM is tasked with seeking ways to simplify access to transportation services for persons with disabilities, persons with lower incomes, and older adults. The EO requires that CCAM members work together to provide the most appropriate, cost effective services within existing resources, and reduce duplication to make funds available for more services. To meet the requirements of the EO, the CCAM has developed a comprehensive action plan and launched United We Ride (UWR), a national initiative on human service transportation coordination, which includes senior mobility. The NTACST will be directly linked with UWR and related to technical assistance initiatives in the area of older adult mobility and human service transportation coordination. FTA will be collaborating with other members of CCAM on the implementation of the EO and therefore, the technical assistance provided under this solicitation will seek to complement and optimize, not duplicate the technical assistance and related work funded in this area by other CCAM partners.

FTA, in partnership with AoA, will provide technical assistance through a cooperative agreement to the Aging Services network, consumers, and transportation providers (public and private) engaged in older adult mobility and human services transportation for older adults. Older adult mobility and human service transportation is defined as a network of services included but not limited to driving modification and transition; pedestrian access; public transportation; paratransit (curb to curb, door to door, door through door); taxi service; and volunteer services. Technical assistance is a process that enables a goal focused, strategy oriented, accountable organization to transfer knowledge to clients for the purpose of their growth, change, and improvement. Technical assistance is intended to provide extensive information and assistance to facilitate adoption or application of research-based or practice-based products, policies, or knowledge in order to improve the provision of services for target populations. Technical assistance may include information dissemination, training, and enhancing capacity for building more efficient transportation services at the local and state levels. A primary goal of the technical assistance offered by the NTACST is to facilitate the expansion of transportation services and options for older persons in their local communities. A key strategy to accomplish this expansion of service is coordination of transportation programs and initiatives. The following areas will be key areas of focus for the NTACST activities:

Needs Assessments and Assistance Plans. The NTACST will conduct a comprehensive assessment of technical assistance needs in the area of senior mobility in year one. Based on this information, the NTACST will formulate a plan in coordination with FTA and AoA for conducting technical assistance in future years of funding. When conducting technical assistance, sites will have individual technical assistance plans that outline the specific need, intended outcome, plan for assistance, and evaluation components. Technical assistance will be provided via e-mail, phone, and on-site strategies, using the following principles:

Peer-to-Peer Learning: Assistance will be provided in locating, planning, and facilitating access to peer-based information, experience, and advice. Facilitation may include having the grantee pay travel and expenses for peer assistance.

Expert Knowledge: Assistance will be provided in accessing and developing the best research evidence and program information available into effective program demonstrations.

Communities of Practice: The grantee will establish communities of practice: groups of people who share a concern for what they do and learn how to do it better as they interact regularly. Communities of practice can involve all different types of stakeholders and participants. Communities of practice can meet via e-mail, Internet, face to face, or in other venues to share information, techniques, strategies, and experiences.

Grantee specific in-depth substantive assistance: Assistance will be provided to states and local communities in the development of major program components or in solving major technical problems requiring a substantial amount of in-depth assistance (on-site as necessary).

Knowledge Management: Constant assessment will be made of areas of technical assistance focus to ensure best practices of disseminated, issued briefs are developed as needed and expert relationships with technical assistance recipients result in long-term information and knowledge transfer.

Training: Curriculum development, design, and training will be made available via various media to target specified topics related to senior mobility across the range of service options. Training should be available for human service providers, transportation providers, and consumers. Technical assistance is to be consistent with the ''5's A's of Senior Friendly Transportation'' developed by the Beverly Foundation:[4]

[3] Executive Order 13330, ''Human Service Transportation Coordination''; 69FRZ80, February 24, 2004.

[4] From URL: *http://www.beverlyfoundation.org/admin/files/stored_file/5As%20MobSnap.pdf.*

THE 5 A'S OF SENIOR FRIENDLY TRANSPORTATION

Availability	Transportation exists and is available when needed (*e.g.,* transportation is at hand, evenings and/or weekends).
Accessibility	Transportation can be reached and used (*e.g.,* bus stairs can be negotiated; bus seats are high enough; van comes to the door; bus stop is reachable).
Acceptability	Deals with standards relating to conditions such as cleanliness (*e.g.,* the bus is not dirty); safety (*e.g.,* bus stops are located in safe areas); and user-friendliness (*e.g.,* transit operators are courteous and helpful).
Affordability	Deals with costs (*e.g.,* fees are affordable; fees are comparable to or less than driving a car; vouchers or coupons help defray out-of-pocket expenses).
Adaptability	Transportation can be modified or adjusted to meet special needs (*e.g.,* wheelchair can be accommodated; trip chaining is possible).

*The 5 A's of Senior Transportation were developed by the Beverly Foundation, 2001.

Thus, the results of technical assistance are targeted to enhance availability, accessibility, acceptability, affordability and adaptability for older adults. In order to achieve these goals, technical assistance will need to focus around one-stop access systems, streamlining eligibility, enhancing transportation coordination, breaking down regulatory/funding, sharing barriers and social marketing to get information out to local consumers.

Tasks

In the performance of this cooperative agreement, the grantee should accomplish the following tasks.

Task 1—Administration

- The grantee should meet with the project officer and task order monitor within ten (10) working days after issuance of the task order to discuss the objectives of the cooperative agreement and any related project. The work plan should incorporate the CCAM Action Plan and the GAO Study on Senior Mobility which can be found on the CCAM Web site at *http://www.unitedweride.gov.* The work plan should be submitted to the project officer within six (6) weeks of grant award.
- The grantee will hold regular meetings with the Director of NTACST to review the status of the project. Areas of concern are (1) accomplishments to date, (2) reviewing progress on tasks, including ''user'' plans for technical assistance to demonstration grantees, and (3) problems.
- The grantee will brief FTA, AoA, and other members of the CCAM semiannually on their technical assistance findings, key themes and results.
- The grantee will prepare benchmarking reports of NTACST activities on a semiannual basis. These benchmarking reports may include documentation of submitted quarterly and annual reports, as well as financial statements.
- The grantee will prepare a monthly NTACST activity report with an accompanying explanation for NTACST invoices, and submit it to the project officer.
- The NTACST should include a national steering committee to provide guidance and feedback throughout the life of the technical assistance center. Steering committee members should include participants from national organizations representing the aging provider network, public and private transportation, senior advocacy groups and consumers. The steering committee should participate in the review and development of products, materials, and information. The technical assistance center should host full committee meetings at least once every quarter, for a minimum of four meetings a year.
- The grantee will prepare a quarterly travel schedule of all upcoming NTACST staff speaking engagements, representation on committees, meetings, etc., and forward it prospectively to the project officer.

Task 2—Technical Assistance and Training

- *Needs assessments and assistance plans.* The NTACST will conduct a comprehensive assessment of technical assistance needs in the areas of older adult mobility in year one. Based on this information, the NTACST will formulate a plan in coordination with FTA, Administration on Aging (AoA) and other Federal partners for conducting technical assistance at the state and local levels in future years of funding. The grantee will work with local sites to develop individual technical assistance plans that outline specific needs, intended outcomes, plans for assistance, and evaluation components.
- *Technical Assistance Strategies:* The grantee will develop the following initiatives: Providing technical assistance to the fifty states, the District of Columbia, American Samoa, Central Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands by:

a. Assisting FTA, AoA, and other Federally funded programs through at least twelve (12) site visits, telephone and/or electronic inquiries. Special consultants may be used and the grantee should have demonstrated expertise in maintaining adequate number of consultants.

b. Establishing state and local UWR coalitions. Analyze, assess and evaluate the value of these coalitions with the project officer.

c. Integrating a range of services including driving transition, pedestrian environments, fixed route transit, paratransit services, taxi programs, door through door or escort options, voucher models, and volunteer transportation programs into overall technical assistance.

d. Assisting local communities with the development of mobility management strategies and concepts that enhance transportation service options and access for older adults.

e. Assisting states and local communities in developing strategies for implementing consumer advocacy programs and addressing the needs of older adults from culturally diverse communities.

f. Assisting states and local communities with identification of intelligent transportation systems and other technologies that enhance transportation services for older adults.

g. Developing and implementing a quality performance process and benchmarking regarding technical assistance provided by NTACST; this is to include methods and strategies provided by the technical assistance team as it relates to successful funding. The grantee should integrate pertinent findings from the needs assessment and incorporate them into successful technical assistance strategies. The frequency of reports will be semi-annually, or as needed, but will not be more frequent than monthly.

h. Organizing a team approach, which might include personnel assuming responsibility for a number of states/and or regions. There should be an overall

strategic approach to proactive technical assistance, which will include an emphasis on senior mobility and human service transportation coordination.

i. Organizing a systematic approach for at least twelve site visits per year. The grantee should develop a team approach to these site visits. The grantee should develop, with input from stakeholders (*e.g.,* consumers, public and private transportation agencies, human service providers), agendas and criteria for these site visits as well as to brief Federal program staff. The grantee should develop briefing packets and initiate communication with the project officer prior to site visits in order to present a comprehensive description of the activity. The grantee should coordinate and maintain an integrated approach to all documentation and subsequent data collection regarding all site visits.

j. In cooperation with Indian Health Services (IHS), AoA, the project officer, and others as appropriate, assess, analyze and implement appropriate actions to integrate senior mobility and human service transportation in Tribal and non-Tribal entities serving Native American populations; the grantee should provide technical assistance to and collaborate with organizations that are actively engaged in improving the health and well-being of Native American elders.

k. Implement training on topics related to older adult transportation. Training should be considered for transportation providers, human service providers, and consumers. If necessary, curricula for specific training should be developed or modified for existing available materials.

Task 3—Demonstration Grants

- The grantee should award senior transportation demonstration grants to local transportation organizations, state agencies, units of government and non-profit organizations in areas related to senior transportation.
- The grantee should enlist a fair and equitable process for soliciting proposals and for project selection, which is representative of diverse geographical regions across the country.
- The grantee should submit a list of final recommended projects to the project officer for review and approval prior to the final award notification.

Task 4—Communication and Management Information Activities

- The grantee should work collaboratively to coordinate input, direction and advice regarding required Federal clearances on all publications regardless of the medium (*e.g.,* print, video, electronic, etc). In the first year, the grantee should work with FTA and the NTACST's steering committee to develop a logo and design for future activities of the NTACST in the first year.
- In the first year, the grantee should develop at least three products. These products may be in the form of training curricula, video, CD–ROM or other format appropriate to the audience. The type and nature of the product will be determined in coordination with the project officer and the steering committee and should be based on the needs assessment from states and local communities. The grantee should make alternative formats available for all publications and products. The grantee should coordinate and participate in an overall product evaluation for all products developed with FTA funding. This evaluation should be done annually.
- In the first year, the grantee should develop at least five fact sheets on targeted topics related to senior transportation and senior mobility and human service transportation coordination. The grantee should work collaboratively with the project officer and the steering committee to identify specific topics.
- In the first year, the grantee should provide a minimum of five updates per month related to senior transportation to the UWR webmaster to be posted on the CCAM Web site *http://www.unitedweride.gov.* This includes products, Web links, and useful practices.
- The grantee should establish, maintain and facilitate NTACST electronic communications using a variety of mediums (*e.g.*, print, video, electronic, Web-based, etc), which may include a Web site, bulletin board service, list serve, and selected internet focus groups for targeted topics.
- In the first year, all NTACST staff and/or contractual presentations at a local, state and national level are to be fully coordinated, with an ample timeline for discussion and approval, with the project officer. The grantee should plan for at least twelve (12) meetings annually that involve other than local travel. The grantee should plan for an additional fifteen (15) meetings annually in the Washington, DC area. The grantee should be both a presenter and an exhibitor during national, regional, and state meetings. In some cases, the grantee may also serve as a moderator or facilitator during targeted sessions.
- In the first year, the grantee should use an existing clearinghouse function to ensure the dissemination of information related to older adult transportation inclusive of a range of services: driving transition, pedestrian access, travel training, fixed route, paratransit, volunteer services, escort service, etc. Information should include existing products and materials as well as educational development information.
- In the first year, the grantee should develop a database of successful national public and private products that could potentially provide added value for senior mobility and human service transportation coordination. This includes video, curricula, and fact sheets. This database should include the title, description, and information on how to obtain the documents included in the database. The database will also include any evaluation information related to the product.

Task 5—Strategic Development in Partnerships, Community Involvement in Senior Transportation, and Senior Mobility and Human Service Transportation Coordination

- Senior mobility and human service transportation coordination is very dynamic and new areas of significance continually emerge. It is essential that the grantee respond appropriately and address these issues. Additionally, the grantee should provide expertise in strategic direction in senior mobility and human service transportation and senior mobility for community involvement and public awareness as follows:

a. The grantee should assess, analyze, and measure trends in the implementation of senior transportation activities on a state and regional basis. The grantee should provide, in cooperation with the project officer, an annual report on these activities.

b. The grantee should provide guidance and direction on establishing coalitions, which can be integrally involved in providing strategic direction for state and community involvement in human service transportation.

c. The grantee should serve as a resource of information on UWR strategic direction related to senior mobility as it relates to pending and enacted legislation at all governmental levels.

d. The grantee should enhance awareness by all stakeholders of funded senior mobility and related human service transportation activities regarding strategic direction of community involvement by integrating appropriate and relevant information on a monthly basis through a variety of communication mechanisms.

e. The grantee, in cooperation with Federal program staff, should assess, analyze and monitor key activities and milestones of national organizations and Federal agencies, interagency liaison groups, private industry, faith-based/community organizations, professional organizations and members of the National Consortium for Human Service Transportation related to UWR activities and subsequently determine educational resources that may be of value on a quarterly basis.

TASK 6—Collaboration with FTA and the Federal Coordinating Council on Access and Mobility

• The grantee in coordination with the project officer should provide technical assistance to the Coordinating Council on Access and Mobility (CCAM). This may include organizing monthly conference calls, attending relevant and value-added national meetings/conferences, providing input regarding infrastructure development of the CCAM activities related to senior transportation, formulating agendas and identifying speakers for CCAM and their executive council meetings.

• In coordination with the project officer, the grantee should develop efficient strategies and methods of establishing linkages with other Federally funded technical assistance centers in the areas of aging, pedestrian access, and the range of human service transportation options. In addition, the grantee will conduct a minimum of two trainings each year related to senior mobility for these technical assistance centers.

• The grantee should provide research-related technical assistance to project directors involved with senior mobility and human service transportation funded activities.

• The grantee should develop and maintain a comprehensive national coalition on senior transportation that is inclusive of advocacy organizations; public interest organizations; and provider organizations. This coalition should work in collaboration with the National Consortium on Human Service Transportation, a network of transportation professionals, human service professionals and policymakers at every level who understand the issues involved in the coordination of human services transportation and how coordination can be accomplished. The NTACST will develop a strategic plan for the coalition that includes education, outreach, technical assistance and advocacy oriented activities. The coalition can also focus on broader senior mobility and human service transportation initiatives that benefit the mobility of older adults. This coalition will serve to facilitate the development of state and local coalitions in all states and territories over the course of the cooperative agreement.

• Assist Federal program staff to conduct at least two special interest meetings per year on targeted topics selected in consultation with FTA, AoA, and the NTACST steering committee.

II. Award Information

FTA will fund one cooperative agreement for a five year award. Year one of the cooperative agreement is for two million dollars ($2,000,000). The anticipated notification date is the winter of 2006, with an anticipated starting date for the successful applicant of February 2006. Subsequent annual funding is authorized at one million dollars ($1,000,000) in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU); actual funding will be based on annual appropriations. FTA grantees with existing FTA projects are eligible to compete for this competitive cooperative agreement. The FTA will participate in activities by attending review meetings, commenting on technical reports, maintaining frequent contact with the project manager and approving key decisions and activities any redirecting activities if needed.

III. Eligibility Information

FTA is particularly interested in proposals for this cooperative agreement from national non-profit-organizations with demonstrated capacity in state and community transportation services for older adults in the following areas:

• Understanding concepts and strategies for developing integrated access, including single entry point and one-stop transportation systems;

• Understanding strategies for building a coordinated senior mobility and human service transportation program;

• Demonstrated success with interdisciplinary strategies in aging and transportation related work;

• Experience with the development and implementation of integrated transportation systems with health care and social support programs;

• Capacity for maintaining management information systems;

• Experience in implementation of consumer directed services;

• Experience and capacity in developing and utilizing volunteer programs and networks;

• Capacity and experience to build coordination and collaboration between public and private sector, as well as critical pathways which include linkages with intermediary organizations such as hospital discharge planners, private pay insurance, various social service and transportation system networks.

• Experience and knowledge of consumer involvement and consumer directed models in program planning and implementation;

• Capacity for developing and managing a technical assistance network using multiple types of intervention strategies (*e.g.,* long distance, peer-to-peer, onsite, communities of practice, etc.);

• Capacity and experience for providing effective off-site technical assistance, including technical assistance by telephone and e-mail, moderated and unmoderated list-serves, Web-based seminars, topic-based conference calls, the internet (including he development of Web content), etc.;

• Knowledge of caregiver issues and long-term care home and community based services related to senior mobility;

• Understanding implementation of a range of transportation services including older driver, pedestrian access, fixed route, paratransit, assisted (door to door; hand to hand; escort) services, volunteer, taxi, and other types of transportation services provision;

• Capacity and experience for conducting face-to-face and Web-based training for consumers, human service/aging providers, and transportation agencies.

IV. Proposal Content

Proposals should be submitted in double-spaced format using times roman 12 point font. The application must contain the following components:

1. Cover sheet (1 page): Includes entity submitting proposal, principle investigator, title, and contact information (*e.g.,* address, phone, fax, and e-mail). Name and contact information for the entity's key point of contact for all cooperative activities (if different from principle investigators).

2. Abstract (2 pages): Abstract should include background, purpose, methodology, intended outcomes, and plan for evaluation.

3. Detailed budget proposal and budget narrative.

4. Project narrative (not to exceed 100 pages): Project narrative should include the following information;

a. Staff qualifications, experience in providing technical assistance and implementing the other tasks outlined in the solicitation. The proposal should also include the proposed staff

members' knowledge of issues related to seniors and senior transportation. One page biographical sketches for staff members should be included in the appendices section of the proposal;

b. Existing and future capacity of organization to address the issues outlined in the proposal and ability to implement tasks 1–6 outlined under Section I in this solicitation;

c. Methodology for addressing tasks 1–6 outlined under Section I in this solicitation. The proposal should also include objectives, activities, deliverables, milestones, timeline and intended outcomes for achieving the goals outlined in the scope for the first year;

d. Plan to work with stakeholders and build partnerships at the national, state, and local levels;

5. Plan for evaluation and data collection.

6. Supplemental materials and letters of support can be included in an appendices section that is beyond the 100 page limit. In addition to the full proposal, entities have the option to submit supplemental material such as: brochures, products, etc. These materials should be delivered to Bryna Helfer, Federal Transit Administration, Office of Grants Management, UWR Initiative, 400 7th Street, SW., Room 9114, Washington, DC 20590.

V. Application Review Information

Interdisciplinary review panels external to FTA will be convened to review each proposal. Project proposals will be evaluated based on the following criteria.

1. Staff qualifications, which includes experience in delivering technical assistance and training, knowledge of senior mobility issues, demonstrated process skills in assessment, strategic planning, facilitation, and other key areas associated with identified tasks. Entity should also address a plan for knowledge retention. (30%)

2. Existing capacity of the organization, which includes clearinghouse functions, web development and maintenance, technical assistance, training long distance and on-site intervention strategies, and other identified tasks. (30%)

3. Reasonability of proposed goals, objectives, strategies, timelines, and budget. (20%)

4. Plan to collaborate with stakeholders and establish effective partnerships to implement tasks. (10%)

5. Plan for evaluation and data collection. (10%)

VI. Award administration Information

The anticipated notification date for the award of this cooperative agreement is the winter of 2006, with an anticipated start date for the successful applicant is February 2006. The Federal Transit Administration's (FTA) Administrator will notify the successful entity. Following receipt of the FTA Administrator's notification letter, the successful entity will be required to submit their proposal through the FTA Transportation Electronic Award Management (TEAM) system website. FTA will manage the cooperative agreement through the TEAM system Web site. Before FTA may award Federal financial assistance through a Federal grant or cooperative agreement, the entity must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations.

These certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. Chapter 53, or Title 23, United States Code, or another Federal statute. Since Federal fiscal year 1995, FTA has been consolidating the various certifications and assurances that may be required of its awardees and the projects into a single document published in the **Federal Register**. Fiscal year 2006 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements and guidelines will be published in the **Federal Register** and posted on the FTA Web site at *http://www.fta.dot.gov*.

Jennifer L. Dorn,

Administrator.

[FR Doc. 05–22057 Filed 11–4–05; 8:45am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Application Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
X—Renewal.
PM—Part to application with modification request.

Issued in Washington, DC, on November 1, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Safety Special Permits & Approvals.

NEW SPECIAL PERMIT APPLICATIONS

Application no.	Applicant	Reason for delay	Estimated date of completion
13281–N	The Dow Chemical Company, Midland, MI	4	01–31–2006
13266–N	Luxfer Gas Cylinders, Riverside, CA	4	12–31–2005
13309–N	OPW Engineered Systems, Lebanon, OH	4	12–31–2005
13341–N	National Propane Gas Association, Washington, DC	3	12–31–2005
13347–N	ShipMate, Inc., Torrance, CA	4	12–31–2005
13302–N	FIBA Technologies, Inc., Westboro, MA	4	11–30–2005

NEW SPECIAL PERMIT APPLICATIONS—Continued

Application no.	Applicant	Reason for delay	Estimated date of completion
13314–N	Sunoco Inc., Philadelphia, PA	4	12–31–2005
13346–N	Stand-By-Systems, Inc., Dallas, TX	1	12–31–2005
13547–N	CP Industries, McKeesport, PA	4	12–31–2005
14162–N	BSCO Incorporated, Forest Hills, MD	4	12–31–2005
14150–N	Eli Lilly & Company, Indianapolis, IN	4	12–31–2005
14151–N	Chevron Texaco, Houston, TX	4	12–31–2005
14149–N	Digital Wave Corporation, Englewood, CO	4	12–31–2005
14140–N	Albemarle Corporation, Baton Rouge, LA	4	12–31–2005
14141–N	Nalco Company, Naperville, IL	4	12–31–2005
14138–N	INO Therapeutics, Inc., Port Allen, LA	4	12–31–2005
14038–N	Dow Chemical Company, Midland, MI	1	12–31–2005
13999–N	Kompozit-Praha s.r.o. Dysina u Plzne Czech Republic, CZ	4	12–31–2005
14206–N	Digital Wave Corporation, Englewood, CO	4	01–31–2006
14190–N	Cordis Corporation, Miami Lakes, FL	4	12–31–2005
14189–N	PPG Industries, Inc., Pittsburgh, PA	4	12–31–2005
14185–N	U.S. Department of Energy, Washington, DC	4	12–31–2005
14184–N	Global Refrigerants, Inc., Denver, CO	4	12–31–2005
14178–N	Brider Fire Inc., Bozeman, MT	4	12–31–2005
14175–N	Air Products & Chemicals, Inc., Allentown, PA	4	12–31–2005
14167–N	Trinityrail, Dallas, TX	4	12–31–2005
14163–N	Air Liquide America L.P., Houston, TX	4	12–31–2005
13957–N	T.L.C.C.I, Inc., Franklin, TN	4	12–31–2005
13582–N	Linde Gas LLC (Linde), Independence, OH	4	12–31–2005
13563–N	Applied Companies, Valencia, CA	4	12–31–2005
	Modification to Special Permits		
7277–M	Structural Composites Industries, Pomona, CA	4	11–30–2005
10019–M	Structural Composites Industries, Pomona, CA	4	11–30–2005
10878–M	Tankcon FRP Inc., Boisbriand, Qc	1, 3	11–30–2005
11241–M	Rohm and Haas Co., Philadelphia, PA	1	12–31–2005
12284–M	The American Traffic Safety Services Assn. (ATSSA), Fredericksburg, VA	1	12–31–2005
12412–M	Los Angeles Chemical Company, South Gate, CA	4	11–30–2005
12412–M	Hawkins, Inc., Minneapolis, MN	3, 4	11–30–2005
11903–M	Comptank Corporation, Bothwell, ON	4	12–31–2005
13229–M	Matheson Tri-Gas, East Rutherford, NJ	4	12–31–2005
9659–M	Kaiser Compositek Inc., Brea, CA	4	12–31–2005
12384–M	OilAir Hydraulics, Inc., Houston, TX	4	12–31–2005
13327–M	Hawk FRP LLC, Ardmore, OK	1	12–31–2005
13488–M	FABER INDUSTRIES SPA, (U.S. Agent: Kaplan Industries, Maple Shade, NJ)	4	12–31–2005
10319–M	Amtrol, Inc., West Warwick, RI	4	12–31–2005
6263–M	Amtrol, Inc., West Warwick, RI	4	12–31–2005
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12–31–2005
10915–M	Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA	1	12–31–2005
7280–M	Department of Defense, Ft. Eustis, VA	4	12–31–2005
8162–M	Structural Composites Industries, Pomona, CA	4	11–30–2005
8718–M	Structural Composites Industries, Pomona, CA	4	11–30–2005
	Renewal to Special Permits		
9649–X	U.S. Department of Defense, Fort Eustis, VA	1	11–30–2005

[FR Doc. 05–22102 Filed 11–4–05; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Community and Economic Development Entities, Community Development Projects—12 CFR part 24.''

DATES: You should submit comments by January 6, 2005.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0194, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at

the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0194, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Community and Economic Development Entities, Community Development Projects—12 CFR 24.

OMB Number: 1557–0194.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised estimates and extend its approval of the information collection.

Section 24.5(a) provides that an eligible bank may make an investment without prior notification to, or approval by, the OCC if the bank submits an after-the-fact notification of an investment within 10 days after it makes the investment.

Section 24.5(a)(4) provides that a national bank that is not an eligible bank but that is at least adequately capitalized may submit a letter to the OCC requesting authority to self-certify investments.

Section 24.5(b) provides that if a national bank does not meet the requirements for after-the-fact notification, the bank must submit an investment proposal to the OCC.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 250.

Estimated Total Annual Responses: 250.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 371 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2005.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 05–22135 Filed 11–4–05; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register

Vol. 70, No. 214

Monday, November 7, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request For Modified OGE Form 201 Ethics Act Access Form

Correction

In notice document 05–21834 beginning on page 66437 in the issue of Wednesday, November 2, 2005, make the following correction:

On page 66437, in the second column, under the **DATES** heading, in the third and fourth lines ''January 17, 2005'' should read ''January 17, 2006.''

[FR Doc. C5–21834 Filed 11–4–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine War Risk Insurance; Transportation Secretary's Authorities Extension

Correction

In notice document 05–21853 appearing on page 66484 in the issue of Wednesday, November 2, 2005, make the following correction:

On page 66484, in the second column, under the **SUMMARY** heading, in the third paragraph, in the fifth line, ''December 13, 2005'' should read ''December 13, 2004''.

[FR Doc. C5–21853 Filed 11–4–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
November 7, 2005

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2005; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4997–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2005

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2005, and ending on June 30, 2005.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone 202–708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2005.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register.** These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337) (1991 Policy Statement). This notice covers waivers of regulations granted by HUD from April 1, 2005, through June 30, 2005. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Panning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about regulatory waivers granted during the period covered by this report (the second quarter of calendar year 2005) before the next report is published (the third quarter of calendar year 2005), HUD will include any additional waivers granted for the second quarter in the next report.

This report of regulatory waivers does not contain a summary of waivers that were granted to waive the electronic grant application submission requirement as provided in HUD's Fiscal Year (FY) 2005 Super Notice of Funding Availability (FY2005 SuperNOFA), published on March 21, 2005 (70 FR 13576, see 70 FR 13584). These waivers have been determined not to be subject to the requirements of section 106 of the HUD Reform Act. The requirement to submit applications electronically, as provided under the FY2005 SuperNOFA is not viewed as a regulatory requirement. The SuperNOFA's reference to HUD's regulation in 24 CFR 5.110 (which govern regulatory waivers) was included only to clarify that the grounds for waiving the electronic submission requirement would be a good cause showing, similar to regulatory waivers.

The process by which a waiver of the electronic application submission requirement could be obtained was set out in detail in the FY2005 SuperNOFA, making this process comparable to express authorities that allow the Department to relax otherwise applicable requirements and which authorities are exempt from the section 106 requirements (see 1991 Policy Statement at 56 FR 16338). Additionally, one of the objectives of the section 106 requirements is to ensure that the public knows what regulations are being waived, who requested the waiver, and whether the waiver request was granted. The FY2005 SuperNOFA already discloses that the electronic submission requirement is eligible for waiver. The information that is not disclosed at this time is identifying the applicant that is requesting the waiver of this requirement and whether the waiver was granted. That information is being withheld at this time to avoid a violation of section 103 of the HUD Reform Act and HUD's implementing regulation at 25 CFR 4.26(c)(2)(i), which prohibits disclosure of the identify of any applicant before the deadline for the submission of application. That information, however, will become part of the applicant's application file. In accordance with section 102(a)(4)(E) of the HUD Reform Act, and HUD's implementing regulation at 24 CFR 4.5, those files will be available for public inspection commencing 30 days after the award of grants is made and will remain available for at least five years.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: October 24, 2005.

Keith E. Gottfried,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2005, Through June 30, 2005

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory Waivers Granted by the Office of Community Planning and Development.

II. Regulatory Waivers Granted by the Office of Housing.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 92.503(b).

Project/Activity: The City of Greensboro, North Carolina, requested a waiver of 24 CFR 92.503(b) of the HOME Program regulations (24 CFR part 92).

Nature of Requirements: Section 92.503(b) requires a participating jurisdiction to repay to its HOME account any HOME funds invested in a project that fails to meet the affordability requirements for the period specified in 24 CFR 92.252.

Granted by: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 20, 2005.

Reasons Waived: The City has worked diligently to devise a plan that ensures that the HOME affordability requirements will be met and maintain the number of affordable housing opportunities available to low-income persons in the community.

Contact: Shawna Burrell, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.251(a)(2).

Project/Activity: The State of Oregon requested a waiver of the HOME Program 24 CFR 92.251(a)(2) for assistance provided under its American Dream Downpayment Initiative (ADDI) Program.

Nature of Requirement: Section 92.251(a)(2) states that HOME-assisted housing must meet all applicable state and local housing quality standards and code requirements. If no such standards exist, the housing must meet the housing quality standards at 24 CFR 982.401 for HUD's Housing Choice Voucher Program.

Granted by: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 17, 2005.

Reasons Waived: The state's use of Minimum Property Standards (MPS) would ensure that ADDI units are decent and free of safety hazards, while eliminating potentially duplicative inspections and ensuring equal access to the ADDI program in rural areas of the state.

Contact: Martha Murray, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2684.

• *Regulation:* 24 CFR 91.15(a)(2).

Project/Activity: The State of Indianapolis, Indiana requested a waiver of 24 CFR 91.15(a)(2) of the consolidated plan submission regulations.

Nature of Requirement: Section 24 CFR 91.15(a)(2) requires a participating jurisdiction to submit its consolidated action plan no later than August 16 of the federal fiscal year for which grant funds were appropriated.

Granted by: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 16, 2005.

Reasons Waived: Indianapolis is seeking a waiver of 24 CFR 91.15(a)(2) to extend its submission deadline for its FY2004 consolidated action plan until forty-five days after it is notified of HUD's approval of its waiver request. This will enable the City to amend its FY2004 consolidated action plan to include its FY2003 and FY2004 ADDI programs, this waiver will enable Indianapolis to use its FY2003 and FY2004 ADDI program funds to assist first time homebuyers.

Contact: Ginger Macomber, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2684.

• *Regulation:* 24 CFR 92.214(a)(6).

Project/Activity: Washington County, Oregon has requested a waiver under 24 CFR 92.214(a)(6) of the Home program regulations.

Nature of Requirement: This section of the HOME Final Rule states that except for the 12 months following project completion, additional HOME assistance may not be provided to a previously assisted HOME project during the period of affordability.

Granted by: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: June 17, 2005.

Reasons Waived: The County and its partners worked to stabilized the vacancy rate, access rehabilitation needs, and leverage additional resources. Through a capital needs assessment, they developed a detailed repair and replacement plan that will make Fircrest Manor competitive in the market and more financially viable.

Contact: Martha Murray, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2684.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 266.200(d).

Project/Activity: Mt. Carmel Apartments, Worcester, Massachusetts.

Nature of Requirement: The regulation requires mortgage insurance on risk-sharing transactions by housing finance agencies, rents must be underwritten at the lower of Section 8 rents or market rents for those projects with section 8 subsidies.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 1, 2005.

Reason Waived: Housing Notice 04–21, issued November 12, 2004, allowed direct loans under section 202 of the National Housing Act with section 8 subsidies to be refinanced using, for underwriting purposes, section 8 rents, even if market rents were lower. This change makes it possible to refinance many more of these apartments for the elderly, providing money for repairs and for supportive services. Regulations for risk-sharing require rents at the lower of market rate or section 8, as indicated in the nature of requirement. To put risk-sharing loans on the same basis as loans under the National Housing Act requires a change in regulations, which will be implemented. Pending the change, the waiver on Mt. Carmel was granted for the Massachusetts Housing Finance

Agency to allow underwriting using section 8 rents.

Contact: Michael L. McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000, telephone (202) 708–1142.

• *Regulation:* 24 CFR 290.30(a).

Project/Activity: New York, New York (Renaissance Court—Project Number 012–57231Z). The owner of Renaissance Court has requested prepayment approval of their HUD-held mortgage and assignment of the mortgage to the new mortgagee, Woori American Bank, for mortgage tax savings.

Nature of Requirement: Section 290.3(a) states that ''[e]xcept as otherwise provided in § § 290.30(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis.'' Section 290.31(a)(2) permits negotiated sales to state or local governments for mortgage loans that are current and secured by subsidized projects, provided such loans are sold with FHA insurance.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 25, 2005.

Reason Waived: The owner of Renaissance Court has requested, and HUD approved, prepayment of its mortgage on this property. In lieu of paying off the mortgage directly, Renaissance Associates (the ''Borrower'') requested that the HUD loan secured by the project be assigned to Woori American Bank for mortgage tax savings purposes. Woori American Bank agreed to this assignment and to pay the full amount of the HUD loan (as of March 11, 2005 the loan amount is $2,297,930.60). This waiver allows the non-competitive sale of the HUD-held mortgage securing the project without FHA insurance.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 401.461.

Project/Activity: The following projects requested a waiver to the simple interest requirement on the second mortgage to allow compound interest at the applicable Federal Rate. (24 CFR 401.461):

FHA No.	Project	State
07135614	Kensington Square I	CT
10935073	Bicentennial Apartments	WY

Nature of Requirement: Section 401.461 requires second mortgages to have an interest rate not more than the applicable federal rate. Section 401.461(b)(1) states that interest will accrue but not compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 18, 2005.

Reason Waived: This regulatory restriction would be construed as a form of federal subsidy, thereby creating a loss of tax credit equity. This loss will adversely affect the ability to close the restructuring plan and could cause the loss or deterioration of these affordable housing projects. Therefore, compound interest is necessary for the owner to obtain Low Income Housing Tax Credits under favorable terms and in order to maximize the savings to the federal government.

Contact: Dennis Manning, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	State
06535351	Canton Estates Apartments	MS
04244054	Channelwood Village (aka Callis Tower)	OH
05935039	Cooper Road Plaza Apartments	LA
05235312	Cumberland Manor	MD
06535040	Eastgate Garden Apartments	MS
06535005	Francis Street Apartments	MS
08735149	Indian Hills Apartments	TN
12735200	Lake Chelan Community Apartments	WA
06544802	Madonna Manor	MS
06544042	Northwood Village	MS
06535091	Southwest Village Apartments	MS
05294031	YORK PARK APTS	MD

Nature of Requirement: Section 401.600 requires projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 1, 2005.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-

month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	State
04535018	Calhoun Homes	WV
06144105	Cedar Avenue Apartments	GA
06435239	Chateau Du Lac	LA
2336614	Field Corner Granite	MA
08735144	Gate Manor Apartments	TN
04335176	Hillside Apartments	OH
08644021	Knollcrest Manor Apartments	TN
04635046	Parkview Arms I	OH
04635388	Parkview Arms II	OH
04344061	Rosa Parks Apartments	OH
10935006	Sertoma Senior Citizens Housing, Inc	WY
06592501	William H. Bell Apartments	MS

Nature of Requirement: Section 401.600 requires projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 18, 2005.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–0001.

- *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	State
11535163	Alamo Village Apartments	TX
08635149	Algood Manor Apartments	TN
06244012	Alta Vista Apartments	AL
06135536	Amberwood Apartments	GA
08344081	Belmont Court Apartments	KY
06544052	Broadway Estates	MS
12344027	Broadway House	AZ
11735033	Columbia Square Apts	OK
04235335	Conneaut Apartments	OH
06535066	Delta Apts	MS
06535082	Edgewood Manor Apartments	MS
07344403	Fowler Apartments	IN
08335012	Highland Heights	KY
08638005	Madison View Towers	TN
04344088	Maplewood Apartments	OH
04244043	Moody Manor	OH
06544042	Northwood Village	MS
06235007	Pines Apts	AL
08635062	Spring Haven Apartments	TN
17155001	Tri Cities Vista Low Cost Housing	WA
09144048	Village Green	SD

Nature of Requirement: Section 401.600 requires projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 20, 2005.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0001.

- *Regulation:* 24 CFR 883.606(b).

Project/Activity: Delaware State Housing Authority (Dover, Delaware)—Issuance of Refunding Bonds under section 1012 of McKinney-Vento Act (McKinney Act). HUD did not enforce a regulatory prohibition of collection of both contract administration fees and bond yield override and neglected to issue formal waivers at the time of approval of the transaction in 1991.

Nature of Requirement: This section of the regulation prohibits the collection of an override and a housing assistance payments contract administration fee in connection with the same section 8 project. The issuer collects the override and administrative fee in the projects

included in its McKinney Act bond funding.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2005.

Reason Waived: The waiver was granted based on a finding that the issuer has used these funds in support of affordable housing. HUD, in approving bond refunding proposals submitted by state housing agencies in the early 1990's, did not issue timely waiver of the regulatory prohibition and corrects that oversight by the waiver granted herein.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 6l60, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 883.606(b).

Project/Activity: Iowa Finance Authority (Des Moines, Iowa)—Issuance of Refunding Bonds under section 1012 of McKinney Act. HUD did not enforce a regulatory prohibition of collection of both contract administration fees and bond yield override and neglected to issue formal waivers at the time of approval of the transaction in 1991.

Nature of Requirement: This section of the regulation prohibits the collection of an override and a housing assistance payments contract administration fee in connection with the same section 8 project. The issuer collects the override and administrative fee in the projects included in its McKinney Act bond funding.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 24, 2005.

Reason Waived: The waiver was granted based on a finding that the issuer has used these funds in support of affordable housing. HUD, in approving bond refunding proposals submitted by state housing agencies in the early 1990's, did not issue timely waiver of the regulatory prohibition and corrects that oversight by the waiver granted herein.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 883.606(b).

Project/Activity: Maryland Department of Housing and Community Development (Crownsville, Maryland)—Issuance of Refunding Bonds under section 1012 of McKinney Act. HUD did not enforce a regulatory prohibition of collection of both contract administration fees and bond yield override and neglected to issue formal waivers at the time of approval of the transaction in 1991.

Nature of Requirement: This section of the regulation prohibits the collection of an override and a housing assistance payments contract administration fee in connection with the same section 8 project. The issuer collects the override and administrative fee in the projects included in its McKinney Act bond funding.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 26, 2005.

Reason Waived: The waiver was granted based on a finding that the issuer has used these funds in support of affordable housing. HUD, in approving bond refunding proposals submitted by state housing agencies in the early 1990's, did not issue timely waiver of the regulatory prohibition and corrects that oversight by the waiver granted herein.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6l60, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Divine Providence Apartments, Eunice, Louisiana, Project Number: 064–EE157/LA48–S031–011.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 7, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Villas at Bayou Park, Houston, Texas, Project Number: 114–HD019/TX24–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Peele Manor, Blackstone, Virginia, Project Number: 051–EE100/VA36–S031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Freedom House, Newport, Rhode Island, Project Number: 016–HD039/RI43–Q021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Oak Haven Apartments, Waterford, Pennsylvania, Project Number: 033–EE113/PA28–S031–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 11, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Kona Kakua, Kailua-Kona, Hawaii, Project Number: 140–HD028/HI10–Q001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 13, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Gabriel Manor, St. Martinsville, Louisiana, Project Number: 064–EE141/LA48–S021–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 19, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Poplar Place, Erie, Pennsylvania, Project Number: 033–HD080/PA28–Q031–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 20, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cherbonay at Marsalis Independent Living Center, Dallas, Texas, Project Number: 113–HD030/TX16–Q031–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 22, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Vine Street Manor at Bethel Square, Kansas City, Missouri, Project Number: 084–EE056/MO16–S031–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 27, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Shenandoah Haven, Lafayette, Tennessee, Project Number: 086–HD031/TN43–Q031–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 27, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: CLA Homes I, Springfield, Virginia, Project Number: 000–HD053/DC39–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 29, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Temple Street Elderly Housing, Nahua, New Hampshire, Project Number: 024–EE074/NH36–S031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 6, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Worley's Place, Jacksonville, Arizona, Project Number: 082–EE156/AR37–S031–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 6, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Cove Center, East Providence, Rhode Island, Project Number: 016–HD038/RI43–Q021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 9, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Vincent DePaul Residence, Chicago, Illinois, Project Number: 071–EE192/IL06–S031–016.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 17, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Ottawa River Esttes, Toledo, Ohio, Project Number: 042–HD072/OH12–Q971–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 19, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Charles North Housing, Baltimore, Maryland, Project Number: 052–HD062/MD06–Q031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 25, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Tents of Grace Manor, Village of Gnadenhutten, Ohio, Project Number: 042–EE157/OH12–S031–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 27, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: New Life Homes 5, Albuquerque, New Mexico, Project Number: 116–HD027/NM16–Q041–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 27, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Shakopee Supportive Housing, Shakopee, Minnesota, Project Number: 092–HD062/MN46–Q031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 7, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Lake Senior Housing, Lake Township, Ohio, Project Number: 042–EE146/OH12–S021–009.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 7, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Heartland Christian Towers, Nashville, Tennessee, Project Number: 086–EE048/TN43–S031–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 8, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Anixter Village, Chicago, Illinois, Project Number: 071–HD128/IL06–Q021–006.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 10, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. George Housing Corporation, Superior, Wisconsin, Project Number: 075–HD074/WI39–Q021–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 15, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Bicentennial Apartments, Gillette, Wyoming, Project Number: 109–EE013/WY99–S031–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 17, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Delta 10, Cairo, Illinois, Project Number: 072–HD136/IL06–Q031–012.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 17, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: The Shire, Pikesville, Maryland, Project Number: 052–HD061/MD06–Q031–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 17, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Pius Place, Cincinnati, Ohio, Project Number: 046–EE065/OH10–S021–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.
Date Granted: June 20, 2005.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Village of Oakman Manor, Detroit, Michigan, Project Number: 044–EE087/MI28–S031–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 20, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hungry Run Housing Corporation, Rib Lake, Wisconsin, Project Number: 075–EE124/WI39–S031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 21, 2005.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Unity Gardens Senior Apartments, Windham, Maine, Project Number: 024–EE053/ME36–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 5, 2005.

Reason Waived: Additional time was needed to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Daisy House, Rochester, New York, Project Number: 014–EE208/NY06–S011–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2005.

Reason Waived: Additional time was needed due to the Phase II Environmental Site Assessment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vermont Seniors, Los Angeles, California, Project Number: 122–EE148/CA16–Q981–017.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 21, 2005.

Reason Waived: Additional time was needed for the City Council to approve the release of funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harvard Square, Irvine, California, Project Number: 143–HD011/CA43–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 27, 2005.

Reason Waived: Additional time was needed to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Senior Residence at Kapolei, Kapolei, Hawaii, Project Number: 140–EE024/HI10–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 27, 2005.

Reason Waived: Additional time was needed for the sponsor/owner to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: South Seven Senior Housing, Port Hadlock, Washington, Project Number: 127–EE036/WA19–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 6, 2005.

Reason Waived: Additional time was needed due to the long and extensive permit process.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Woonsocket Neighborhood Development Corporation, North Smithfield, Rhode Island, Project Number: 016–EE046/RI43–S021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 6, 2005.

Reason Waived: Additional time was needed for HUD to receive and issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing

and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hale Mahaolu Ehiku, Kihei, Hawaii, Project Number: 140–EE028/HI10–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 6, 2005.

Reason Waived: Additional time was needed for the sponsor/owner to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Windham Willows, Windham, New York, Project Number: 014–EE210/NY06–S011–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 6, 2005.

Reason Waived: Additional time was needed for the sponsor/owner to secure approval of the water, well, and septic systems.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Wren's Way, Wooster, Ohio, Project Number: 042–HD108/OH12–Q021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 17, 2005.

Reason Waived: Additional time was needed for HUD to process the firm commitment application and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Saugatucket Springs, South Kingstown, Rhode Island, Project Number: 016–EE048/RI43–S021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 18, 2005.

Reason Waived: Additional time was needed for HUD to process the firm commitment application and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hemlock Nob Estates, Tannersville, New York, Project Number: 014–EE209/NY06–S011–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 18, 2005.

Reason Waived: Additional time was needed for the initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Luther Village I of Dover, Dover, Delaware, Project Number: 032–EE012/DE26–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: May 27, 2005.

Reason Waived: Additional time was needed for the sponsor/owner to locate another site and for HUD to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cicero Commons Senior Apartments, Cicero, New York, Project Number: 014–EE215/NY06–S021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 6, 2005.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Red Lake Senior Apartments, Red Lake, Minnesota, Project Number: 092–EE087/MN46–S021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 6, 2005.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Behavioral Health Initiatives, Memphis, Tennessee, Project Number: 081–HD081/TN40–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 7, 2005.

Reason Waived: Additional time was needed for HUD to receive and process the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Gardens at Immanuel House, Hartford, Connecticut, Project Number: 017–EE071/CT26–S021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 10, 2005.

Reason Waived: Additional time was needed for HUD to review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: VOA Sandusky, Sandusky, Ohio, Project Number: 042–HD110/OH12–Q021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 10, 2005.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Whalley Avenue Housing II, New Haven, Connecticut, Project Number: 017–HD031/CT26–Q011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 15, 2005.

Reason Waived: Additional time was needed for HUD to review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: D'Youville Senior Care Center, Lowell, Massachusetts, Project Number: 023–EE155/MA06–S021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 21, 2005.

Reason Waived: Additional time was needed for the sponsor/owner to hire a new general contractor and to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cecilian Village, Philadelphia, PA, Project Number: 034–EE121/PA26–S021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 21, 2005.

Reason Waived: Additional time was needed for the sponsor/owner to prepare the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Cedars II, Methuen, Massachusetts, Project Number: 023–EE109/MA06–S991–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 7, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time to hire a new consultant.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Cornhill Apartments, Rochester, NY, Project Number: 014–HD099/NY06–Q001–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 29, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time due to delays resulting from the Phase II Environmental Site Assessment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Gill Terrace Retirement Apartments II, Ludlow, Vermont, Project Number: 024–EE066/VT36–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 6, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time to bid the contract and to obtain local zoning and permits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Shasta Manor II, Mt. Shasta, California, Project Number: 136–EE067/CA30–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 17, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: White Cone Senior Apartments, White Cone, Arizona, Project Number: 123–EE077/AZ20–S001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 17, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Durango VOA Elderly Housing, Durango, Colorado, Project Number: 101–EE054/CO99–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 18, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Cottonwood Manor VIII, Cottonwood, Arizona, Project Number: 123–EE081/AZ20–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 24, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time due to delays experienced while the City of Cottonwood approved a prior year project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Wakefield Senior Housing, Wakefield, Massachusetts, Project Number: 023–HD158/MA06–S021–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 27, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the

sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project also required additional time due to the zoning process.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Davis Road Group Home, Methuen, Massachusetts, Project Number: 023–HD189/MA06–Q021–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: June 10, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project required additional time due to the zoning process and due to a change in sites.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Friendship House Apartments, Gretna, Louisiana, Project Number: 064–HD074/LA48–Q021–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: June 17 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project required additional time to reissue the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFRf 891.100(d).

Project/Activity: Northwood Elderly Housing, Northwood, New Hampshire, Project Number: 024–EE064/NH36–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 17, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project required additional time due to delays involving the Northwood Village Water District.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Marshall Road, Wellsley, Massachusetts, Project Number: 023–HD181/MA06–Q011–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 20, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project required additional time due to construction costs and market issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Miller Road Group Home, Amesbury, Massachusetts, Project Number: 023–HD179/MA06–Q011–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 21, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project required additional time due to site changes.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Brush Hill Residence, Yarmouth, Massachusetts, Project Number: 023–HD182/MA06–Q011–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 21, 2005.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources. This project required additional time due to zoning issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Stebbins, Alaska (Cupluaq House—Project Number 176–EE012). The Seattle Multifamily Hub requested an age waiver for the subject project due to occupancy problems.

Nature of Requirement: HUD regulations 24 CFR 891 requires occupancy to be limited to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). Regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 11, 2005.

Reason Waived: The age waiver was granted for this project in order to allow flexibility in renting up this Section 202/8 Supportive Housing for the Elderly project. The vacancy problems are due to the demise of some eligible applicants and the project's remote location in Stebbins which is 600 miles from Anchorage making it a significant deterrent in the owner's ability to attract eligible applicants. This waiver will enable the owner to maintain full occupancy and the project will not fail.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 6l60, Washington, DC 20410–5000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Mt. Olive Manor II, Flanders, New Jersey, Project Number: 035–031–EE064/NJ39–S041–002.

Nature of Requirement: Section 891.205 requires Section 202 project owners to be single purpose organizations.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 13, 2005.

Reason Waived: The sponsor/owner will physically attach the subject project to other, previously funded projects, which will permit the subject project to share in the existing community space.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: AHEPA 58–II, Wethersfield, Connecticut, Project Number: 017–EE076/CT26–S031–001.

Nature of Requirement: Section 891.205 requires Section 202 project owners to be single purpose organizations.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Date Granted: June 22, 2005.

Reason Waived: The sponsor/owner will physically attach the subject project to other, previously funded projects, which will permit the subject project to share in the existing community space.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Americus, Georgia (Joy Court Village Apartments—Project Number 061–EE083. The Atlanta Multifamily Hub requested an age waiver to alleviate occupancy problems at the property.

Nature of Requirement: HUD regulations in 24 CFR part 891 requires occupancy to be limited to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). Regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 17, 2005.

Reason Waived: The waiver of this regulation was granted to allow the project owner flexibility in renting up vacant units to individuals who meet the definition of non elderly (between the ages of 55 and 62 years). The owner proposes an aggressive marketing plan in an effort to attract elderly families as well as changing project management. With these efforts, the owner may be able to achieve full occupancy for the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6l60, Washington, DC 20410–7000; telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Huntington, West Virginia (Fairfield Apartments—Project Number 045–EE007). The Charleston Multifamily Program Center has requested waiver of the elderly requirement for the property to alleviate an occupancy problem.

Nature of Requirement: HUD regulations in 24 CFR part 891 requires occupancy to be limited to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). Regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 18, 2005.

Reason Waived: The waiver was granted to alleviate the current occupancy problem. The property has a total of 17 units and is currently at 76 percent occupancy. The property is unable to reach full occupancy due to the ''soft'' housing market in this area. Waiver of these provisions will allow vacancies to be marketed to non elderly, VIL applicants between the ages of 50 and 62. Providing this waiver will allow the owner additional flexibility in attempting to rent the vacant units and perhaps start a waiting list. The current occupancy level will not support the operations of the property.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–5000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Harford, Pennsylvania (Harford Village—Project Number 034–EE075). The Philadelphia Multifamily Hub requested a waiver of the age and very low income requirements for this property to alleviate the current vacancy problem.

Nature of Requirement: HUD regulations in 24 CFR part 891 requires occupancy to be limited to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). Regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: May 18, 2005.

Reason Waived: The waiver was granted to alleviate its current occupancy problem. The 20-unit property is located in a rural section of northern Pennsylvania. At present there

is only one vacant unit with two vacancies anticipated for April 2005. This would result in a vacancy loss of 15 percent. Management has aggressively marketed the property and currently has four prospective applicants on their waiting list, but their incomes are at the low-income level. This waiver will allow the project to reach occupancy levels which will support the operations of the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Weedville, Pennsylvania (St. Joseph's Terrace—Project Number 033–EE080). The Pittsburgh Multifamily Program Center has requested waiver of the very low income requirement for this property to alleviate occupancy problems.

Nature of Requirement: HUD regulations in 24 CFR part 891 requires occupancy to be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). Regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Frank L. Davis, General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Date Granted: June 21, 2005.

Reason Waived: The waiver was granted based on the project's difficulty in maintaining full occupancy. This 22-unit property currently has 8 vacant units. The Section 8 very low income limits in Elk County, Pennsylvania, are prohibitively low. Surrounding counties, which are included in the market area, have higher Section 8 income limits and a population of elderly applicants who often have higher incomes. This waiver will only permit admission of lower income applicants when there are no very low income applicants to fill vacancies. The current occupancy level will not support the operations of the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Indianapolis, Indiana (Gaslight Apartments—Project Number 073–EH243). The Indianapolis Multifamily Program Center requested an age and income waiver for this Section 202 Direct Loan property to allow management to market units to non-elderly and low income eligible tenants to alleviate vacancy and financial problems.

Nature of Requirement: HUD regulations in 24 CFR part 891 requires occupancy to be limited to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). Regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 21, 2005.

Reason Waived: The granted an age and income waiver for this project to alleviate the current occupancy and financial problems at the property. Gaslight Apartments is a 30-unit Section 202 Direct Loan property located in Converse, Indiana, a small rural community with a small senior citizen population located between the towns of Kokomo and Marion, Indiana. The property has only 20 units occupied to date despite extensive outreach efforts. The current occupancy level will not support the operations of the property. The provisions of 24 CFR 891.575 need to be waived in order to allow the property to rent to non-elderly applicants between the ages of 50 and 62 years and to allow applicants to meet the low income eligibility requirement.

Contact: Beverly J. Miller, Director, Office of Asset Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 902.20.

Project/Activity: Avon Park Housing Authority (FL012), Avon Park, FL.

Nature of Requirement: The objective of this regulation is to determine whether a public housing agency (PHA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a PHA's property of properties that includes a statistically valid sample of the units.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 4, 2005.

Reason Waived: Hurricanes Charley, Francis, and Jeanne caused extensive damage to residential, administrative and community buildings and landscape. Repairs are not expected to be completed until March 2006.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8574.

• *Regulation:* 24 CFR 902.20, 902.40, 902.50.

Project/Activity: Bartow Housing Authority (FL026) Bartow, FL.

Nature of Requirement: The objective of 24 CFR 902.20 is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair. REAC provides for an independent physical inspection of a PHA's property of properties that includes a statistically valid sample of the units. Management operations certification is required to be submitted within two months after the PHA fiscal year end (24 CFR 902.40). The Resident Service and Satisfaction Indicator is performed through the use of a survey. The PHA is also responsible for completing implementation plan activities and developing a follow-up plan (24 CFR 902.50).

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 10, 2005.

Reason Waived: The PHA's developments suffered major roof and interior damage from Hurricanes Charley and Jeanne resulting in the relocation of tenants to other units and off site location. The PHA is waived from physical inspections, management operations certification and resident satisfaction survey for Fiscal Year (FY) 2005.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8574.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Housing Authority of the City of Bay Minette (AL164), Bay Minette, AL.

Nature of Requirement: The objective of this regulation is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good

repair. REAC provides for an independent physical inspection of a PHA's property of properties that includes a statistically valid sample of the units.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 10, 2005.

Reason Waived: The PHA sustained mild to severe hurricane damage to 91 of the 107 housing units in September 2004. The PHA is waived from physical inspections for FY2005.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8574.

• *Regulation:* 24 CFR 902.20, 902.30, 902.40, and 902.50.

Project/Activity: Lake Wales Housing Authority (FL071), Lake Wales, FL.

Nature of Requirement: The objective of 24 CFR 902.20 is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair. REAC provides for an independent physical inspection of a PHA's property of properties that includes a statistically valid sample of the units. Additionally, the regulation establishes certain reporting compliance dates; namely, the Audited financial statements are required to be submitted no later than nine months after the PHA's fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133 (24 CFR 902.30), and the Management operations certifications are required to be submitted within two months after the PHA's FYE (24 CFR 902.40). The Resident Service and Satisfaction Indicator is performed through the use of a survey. The PHA is responsible for completing implementation plan activities and developing a follow-up plan (24 CFR 902.50).

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 15, 2005.

Reason Waived: The PHA experienced severe damages caused by Hurricanes Charley, Frances and Jeanne to the administrative offices, and to two housing developments.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8574.

• *Regulation:* 24 CFR 902.30.

Project/Activity: City of Lordsburg Housing Authority (NM034), Lordsburg, NM.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the PHA's FYE, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 19, 2005.

Reason Waived: The PHA has been unable to submit its audited report to REAC because the Financial Assessment Sub-System (FASS) was not accepting the PHA's new auditor's identification number in the system. This resulted in a delayed PHA's audited financial submission.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8574.

• *Regulation:* 24 CFR 902.20, 902.30, 902.40, and 902.50.

Project/Activity: Punta Gorda Housing Authority (FL060), Punta Gorda, FL.

Nature of Requirement: The objective of 24 CFR 902.20 is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair. REAC provides for an independent physical inspection of a PHA's property of properties that includes a statistically valid sample of the units. Additionally, the regulation establishes certain reporting compliance dates; namely, the unaudited financial statements are required to be submitted two months after the PHA's FYE and the audited financial statements are required to be submitted no later than nine months after the PHA's FYE, in accordance with the Single Audit Act and OMB Circular A–133 (24 CFR 902.30), and the Management operations certifications are required to be submitted within two months after the PHA's FYE (24 CFR 902.40). The Resident Service and Satisfaction Indicator is performed through the use of a survey. The PHA is responsible for completing implementation plan activities and developing a follow-up plan (24 CFR 902.50).

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 15, 2005.

Reason Waived: The PHA experienced severe damages caused by Hurricane Charley, which destroyed 154 of the PHA's 184 units and two non-dwelling buildings. The PHA is waived from submitting its financial data, and will not be subject to physical inspection and resident survey for FY2005 and FY2006, and from the management operations certification for FY2005 only.

Contact: David R. Ziaya, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8574.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Municipality of Vega Baja Housing Division (MVBHD), Vega Baja, PR. The MVBHD requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on generally must be used to calculate the monthly housing assistance payment (HAP) for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 22, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the MVBHD to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Jacksonville Housing Authority (JHA), Jacksonville, FL. The JHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during

the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 22, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the JHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Cincinnati Metropolitan Housing Authority (CMHA), Cincinnati, OH. The CMHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 22, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the CMHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the City of Key West (HACKW), Key West, FL. The APHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 21, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HACKW to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Monroe County Housing Authority (MCHA), Key West, FL. The MCHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 21, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the MCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Dickey/Sargent Housing Authority (DSHA), Ellendale, ND. The housing authority requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the DSHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of Skagit County (HASC), Mount Vernon, WA. The HASC requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount

on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HASC to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the City of Crystal City (HACCC), Crystal City, TX. The HACCC requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HACCC to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the City of South Bend (HASB), South Bend, IN. The HASB requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HASB to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Inglewood Housing Authority (IHA), Inglewood, CA. The IHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the IHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Coos-Curry Housing Authority (CCHA), North Bend, OR. The CCHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the CCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.517(c).

Project/Activity: Maine State Housing Authority (MSHA), Augusta, ME. The MSHA requested a waiver of utility allowance adjustment requirements to permit it to not revise its utility allowances so that it could reduce program costs to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.517(c) provides that a public housing agency (PHA) must review its

utility allowances each year and revise its allowances for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the MSHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.3(a)(2).

Project/Activity: Choanoke Area Development Association (CADA), Bertie County, NC. The CADA requested a waiver regarding the availability of vouchers for project-based assistance so that it could enter into an agreement to enter into a HAP contract for 31 units at Ahoskie High School.

Nature of Requirement: Section 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project based HAP contract or otherwise committed, *e.g.*, vouchers issued to families searching for housing or units under an AHAP.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 30, 2005.

Reason Waived: The requirement to have vouchers available at the time of execution of a HAP contract was waived for Ahoskie High School since the project will not be ready for occupancy until January or February 2007, at which time the CADA should have sufficient turnover of vouchers to meet its contractual obligations under a HAP contract.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c) and Section II of subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Bellingham/Whatcom County Housing Authority (Chestnut Street Project), Housing Authority of Island County (Marjie's House), Housing Authority of Thurston County (Falls Point) and Spokane Housing Authority (Cedar West, Woodhaven, Summit View, St. Margaret's and Riverwalk Point I), WA. All four public housing agencies (PHAs) requested a waiver of the competitive selection requirements, and two of the four also requested an exception to the 25 percent cap on the number of units in a building that can have PBA attached, to permit them to attach PBA to units in all eight projects.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section II of subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a HAP contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, this aspect of the law is implemented on a case-by-case basis.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2005.

Reason Waived: Competitive selection requirements were waived since in early 2004 the Washington State Legislature appropriated $2 million to the Washington Families Fund (WFF) to provide comprehensive case management and supportive services to homeless families; and, in support of that effort, PHAs through the Association of Washington Housing Authorities (AWHA) agreed to attach PBA to projects receiving WFF supportive services dollars. Aids Housing of Washington (AHW) was selected to administer the WFF and issued a request for project proposals for WFF dollars on January 25, 2005. The subject projects were selected pursuant to that competitive process. An exception to the unit cap was granted for two of the eight projects (Marjie's House and St. Margaret's) since the projects that are funded under the WFF will have project-specific social service budgets that will cover case management and supportive services. Services will include individualized case management, literacy and job training, assistance in domestic violence and other trauma, referrals for mental health and substance abuse treatment, financial management, basic living skills, childcare, transportation assistance, housing counseling, and parenting skills education and training.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.151(c).

Project/Activity: Cedar Rapids Housing Services (CRHS), Cedar Rapids, IA. The CRHS requested a waiver of the regulation so that it could renew the project-based certificate (PBC) housing assistance payments (HAP) contract for Edgewood Apartments beyond the expiration date of the Annual Contributions Contract since funding increments are only renewed for terms less than a year.

Nature of Requirement: The regulation requires that, with HUD field office approval, and at the sole option of the public housing agency (PHA), PHAs may renew expiring HAP contracts for such period or periods as the HUD field office determines appropriate to achieve long-term affordability of the assisted housing, provided that the term does not extend beyond the Annual Contributions Contract expiration date for the funding source. PHAs must identify the funding source for renewals; different funding sources may be used for the initial term and renewal terms of the HAP contract.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2005.

Reason Waived: Approval to waive the regulation was granted in order to allow the CRHS to provide rental assistance at these developments up to the maximum 15 years allowed under the PBC HAP contracts without having to request HUD field office approval to do so every year or less.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal**

Register Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Michigan State Housing Development Authority (MSHDA), Kalamazoo, MI. The MSHDA requested an exception to the deconcentration requirements to permit it to attach PBA to five units of existing units at Summit Park, which is in census tract 5 that has a poverty rate of 22 percent.

Nature of Requirement: Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 22, 2005.

Reason Waived: An exception to the deconcentration requirements was granted since recent development within a one-mile radius of the project includes a new Felpaush grocery store, a strip mall that has retail, dining, clothing and banking facilities, and new offices for Northside Community Development that will include daycare and community space, which will provide job opportunities for residents of the census tract.

Contact: Dr. Alfred Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Massachusetts Department of Housing and Community Development (DHCD). The DHCD requested an exception to the Initial Guidance for the Acushnet Commons project that is located in a census tract with a poverty rate greater than 20 percent.

Nature of Requirement: Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2005.

Reason Waived: Approval of the exception for deconcentration was granted since comprehensive services will be provided at the project to assist in educational attainment for the residents that ultimately will result in economic improvement. The services that will be provided include career development, education, job training, and other support services such as computer classes, and University of Massachusetts Dartmouth college courses in accounting and business. The development of a new ferry terminal may create job opportunities for residents.

Contact: Dr. Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Massachusetts Department of Housing and Community Development (MDHCD), Haverhill, MA. The MDHCD requested an exception to the deconcentration requirements to permit it to attach PBA to 13 single-room occupancy units at Winter Street Housing, which is in census tract 2601 with a poverty rate of 23.6 percent.

Nature of Requirement: Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2005.

Reason Waived: An exception to the deconcentration requirements was granted since the neighborhood around the project is undergoing significant revitalization. Construction of a new Walgreen's and CVS will begin in a few months and will create approximately 20 jobs in addition to those created by the construction of the stores. The investment in both buildings is approximately $4 million. There are several market rate developments that have been approved or proposed for development. These include a 56-unit and a 60-unit market rate development.

The market value of the units in these developments will range between $160,000 and $250,000. The commercial and residential development and their related activities that will create jobs and housing opportunities are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Dr. Alfred Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of Winston-Salem (HAWS), Winston-Salem, NC.

The HAWS requested an exception to the deconcentration requirements to permit it to attach PBA to 50 units of elderly housing and 28 units in the family development at Happy Hills Gardens HOPE VI Development, which is in census tract 8.02 with a poverty rate of 54.9 percent.

Nature of Requirement: Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2005.

Reason Waived: An exception to the deconcentration requirements was granted since one of the goals of a HOPE VI revitalization project is to transform public housing, which includes lessening concentrations of poverty. Toward that goal, the total number of replacement units that will be assisted will be 130 less than the 488 units in the original public housing development.

Contact: Dr. Alfred Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Massachusetts Department of Housing and Community Development (MDHCD), New Bedford, MA. The MDHCD requested an exception to the deconcentration requirements to permit it to attach PBA to three units of rehabilitated housing at Union Street Lofts, which is in census tract 6518 that has a poverty rate of 37.46 percent.

Nature of Requirement: Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 6, 2005.

Reason Waived: An exception to the deconcentration requirements was granted since, in addition to the mixed income population of the project, the first floor will be rented to businesses that will offer job opportunities to residents of the community. Other recent economic initiatives in downtown New Bedford include: the Star Store, a former department store that has been converted to classroom space for the University of Massachusetts College of Visual and Performing Arts; the new corporate headquarters of Sovereign Bank; and the $10 million restoration and expansion of the Whaling Museum.

Contact: Dr. Alfred Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of the City of Loveland (HACL), Loveland, CO. The HACL requested an exception to the 25 percent cap on the number of units in a building that can have PBA attached to permit it to attach PBA to all 20 units at Willow Place.

Nature of Requirement: Section II of subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a HAP contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, this aspect of the law is implemented on a case-by-case basis.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2005.

Reason Waived: An exception to the unit cap was granted since the HACL still operates a Project Self Sufficiency program at Willow Place and its supportive services include intensive on-site case management, employment training and counseling, educational programs, childcare, classes on parenting and safety training for children. The supportive services provided at Willow Place are consistent with the statute.

Contact: Dr. Alfred Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Sheridan Housing Authority (SHA), Englewood, CO. The SHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 24, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the SHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Englewood Housing Authority (EHA), Englewood, CO. The EHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 24, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the EHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Dowagiac Housing Commission (DHC), Dowagiac, MI. The DHC requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 24, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the DHC to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the City of Loveland (HACL), Loveland, CO. The HACL requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 24, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HACL to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: City of Fairfield Housing Services (CFHS), Fairfield, CA. The CFHS requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy, Assistant Secretary for Public and Indian Housing.

Date Granted: May 24, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the CFHS to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of Thurston County (HATC), Olympia, WA. The HATC requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HATC to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Cohoes Housing Authority (CHA), Cohoes, NY. The CHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the CHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the County of Merced (HACM), Merced, CA. The HACM requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 6, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HACM to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Wilkes-Barre Housing Authority (WBHA), Wilkes-Barre, PA. The WBHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the WBHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Danville Community Development Agency (DCDA), Danville, KY. The DCDA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the DCDA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Asbury Park Housing Authority (APHA), Asbury Park, NJ. The APHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the APHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Greenfield Housing Authority (GHA), Greenfield, MS. The GHA is requesting approval of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disability.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 24, 2005.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher holder with multiple chemical sensitivities to rent a two-bedroom unit so she can isolate problematic chemical and other items until they can be safely integrated into her living space.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Community Development Commission of Mendocino County (CDCMC), Ukiah, CA. The CDCMC is requesting approval of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disability.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 2005.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher holder to remain in his current unit because it is

in close proximity of the services he utilize and so that he can live independently.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.151(c).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA. The SFHA requested a waiver of the Regulation so that it could renew project-based certificate (PBC) housing assistance payments (HAP) contracts for Bernal Gateway, Golden Gate Apartments and the Arc Apartments beyond the expiration date of the Annual Contributions Contract since funding increments are only renewed for terms less than a year.

Nature of Requirement: The regulation requires that, with HUD field office approval, and at the sole option of the public housing agency (PHA), PHAs may renew expiring HAP contracts for such period or periods as the HUD field office determines appropriate to achieve long-term affordability of the assisted housing, provided that the term does not extend beyond the Annual Contributions Contract expiration date for the funding source. PHAs must identify the funding source for renewals; different funding sources may be used for the initial term and renewal terms of the HAP contract.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 6, 2005.

Reason Waived: Approval to waive the regulation was granted in order to allow the SFHA to provide rental assistance at these developments up to the maximum 15 years allowed under the PBC HAP contracts without having to request HUD field office approval to do so every year or less.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Georgia Department of Community Affairs (GDCA), Atlanta, GA. The GDCA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy, Assistant Secretary for Public and Indian Housing.

Date Granted: April 27, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the GDCA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the County of Ford (HACF), Gibson City, IL. The HACF requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) requires that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HACF to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Sanford Housing Authority (SHA), Sanford, NC. The SHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the SHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Littleton Housing Authority (LHA), Colorado. The LHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the

family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the LHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: City of Pittsburg Housing Authority (CPHA), Pittsburg, CA. The PHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the PHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Knoxville Community Development Corporation (KCDC), Knoxville, TN. The KCDC requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the KCDC to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Fairfield Housing Authority (FHA), Fairfield, CT. The FHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the FHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Sullivan County Housing Authority (SCHA), Laporte, PA. The SCHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) requires that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 11, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the SCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Boston Housing Authority (BHA), Boston, MA. The BHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced payment standards earlier than required to avoid termination of HAP contracts during calendar year 2005 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) requires that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower

PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 4, 2005.

Reason Waived: The waiver was granted because this cost-saving measure would enable the BHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), 983.55 (a) and (c), 983.56(c), 983.7(f)(2)(ii) and Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of the City of Milwaukee (HACM), Milwaukee, WI. The HACM requested waiver of the competitive selection requirements and an exception to the deconcentration requirements to permit it to attach PBA to 22 units at the Highland Park Mid Rise HOPE VI Development, which is in census tract with a poverty rate of 21.4 percent.

Nature of Requirement: Section 983.51(a), (b) and (c) require competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section 983.55(a) and (c) and § 983.56(c) for new construction projects and § 983.7(f)(2)(ii) for projects owned by a PHA require compliance with PHA selection criteria. Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 15, 2005.

Reason Waived: Approval to waive competitive selection and related requirements was granted for this project since it underwent a comparable competitive process for Low Income Housing Tax Credits in 2003 through the Wisconsin Housing and Economic Development Authority and was selected without a prior commitment of PBA. An exception to the deconcentration requirements was granted since the mid rise development of 114 units will replace 220 units of existing public housing in the two high-rise towers for the elderly and disabled, which represents a significant reduction in assisted units at the site.

Contact: Dr. Alfred Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Missoula Housing Authority (MHA), Missoula, MT. The MHA requested an exception to the deconcentration requirements to permit it to attach PBA to: 6 units at the YWCA project in census tract 8 with a poverty rate of 24.2 percent; 3 units at Word's Gold Dust project in census tract 2.01 with a poverty rate of 28.3 percent; and 16 units at Maclay Commons in census tract 10 with a poverty rate of 23.9 percent.

Nature of Requirement: Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 15, 2005.

Reason Waived: An exception to the deconcentration requirements was granted since the adjusted poverty rates in the applicable census tracts would all be below 20 percent when the student population related to the University of Montana is discounted. These households have minimum or zero income and occupy nearly 35 percent of Missoula's rental units.

Contact: Dr. Alfred Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Michigan State Housing Development Authority (MSHDA), Lansing, MI. The MSHDA requested a waiver of deconcentration requirements to permit it to attach PBA to 30 units at Herkimer Apartments in Grand Rapids, which is located in census tract 21 that has a poverty rate of 20 percent.

Nature of Requirement: Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 4, 2005.

Reason Waived: An exception to the deconcentration requirements was granted since the area in which Herkimer Apartments is located was designated a Neighborhood Preservation Program target area in 1999 by MSHDA and in 2004 became part of a larger area designated as a Michigan ''Cool Cities'' neighborhood called ''Avenue of the Arts.'' Within this neighborhood is the Martineau Project, a $10.5 million housing and commercial arts project designed to reinforce the current economic development activity by providing 14,000 square feet of commercial space leased to the Calvin College Arts Department and a café and catering business that provides economic opportunities. In addition, market rate units (Front Row Condominiums and City View Condominiums) in the immediate area are selling for up to $329,000.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II of subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance; Section II of subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to

PHA Project-Based Assistance (PBA) Program; Initial Guidance; and 24 CFR 983.51(a)(b) and (c).

Project/Activity: Chicago Housing Authority (CHA), Chicago, IL. The CHA requested an exception to the 25 percent cap on the umber of units in a building that can have PBA attached to permit it to attach PBA to 50 units at the St. Leo's Residence.

The CHA also requested an exception to the Initial Guidance for the St. Leo's Residence that is located in a census tract with a poverty rate greater than 20 percent.

The CHA also requested a waiver of competitive selection of owner proposals under the project-based program for the St. Leo's Residence.

Nature of Requirement: Section II of subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a HAP contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, this aspect of the law is implemented on a case-by-case basis.

Section II of subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Regulations at 24 CFR 983.51 require competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2005.

Reason Waived: An exception to the unit cap was granted based on the nature of the services families would receive. The services include job training and assisting residents in the pursuit of employment. The Department of Veteran's Affairs will operate a nearby community-based outpatient clinic which will contain a floor that will house a computer lab, and job training classrooms.

The project is located in a HUD-designated Enterprise Zone. The purpose of establishing enterprise zones was to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. As these goals are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities, approval of an exception to the deconcentration requirement was granted.

Approval to waive competitive selection requirements was granted for the St. Leo's Residence since the project had undergone a previous federal competition. The project was awarded federal Low Income Housing Tax Credits.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

- *Regulation:* Section II of subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Malden Housing Authority (MHA) Malden, MA. The MHA requested an exception to the 25 percent cap on the umber of units in a building that can have PBA attached to permit it to attach PBA to 19 units at the Cross Street Housing Project.

Nature of Requirement: Section II of subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a HAP contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, this aspect of the law is implemented on a case-by-case basis.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 2005.

Reason Waived: An exception to the unit cap was granted based on the nature of the services families would receive. The services will focus on economic self-sufficiency. Specifically, the owner plans to offer job training, pre-employment counseling, linkage with GED and ESL classes, as well as linkage to day care for children to support job training and job.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

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Federal Register

Monday,
November 7, 2005

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 423

Medicare Program; E-Prescribing and the Prescription Drug Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–0011–F]

RIN 0938–AN49

Medicare Program; E-Prescribing and the Prescription Drug Program

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

ACTION: Final rule.

SUMMARY: This final rule adopts standards for an electronic prescription drug program under Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). These standards will be the foundation standards or the first set of final uniform standards for an electronic prescription drug program under the MMA, and represent the first step in our incremental approach to adopting final foundation standards that are consistent with the MMA objectives of patient safety, quality of care, and efficiencies and cost savings in the delivery of care.

DATES: These regulations are effective on January 1, 2006. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Gladys Wheeler, (410) 786–0273.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Basis

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended Title XVIII of the Social Security Act (the Act) to establish the Voluntary Prescription Drug Benefit Program. Included in the provisions at section 1860D–4(e) of the Act is the requirement that the electronic transmission of prescriptions and certain other information for covered Part D drugs prescribed for Part D eligible individuals comply with final uniform standards adopted by the Secretary.

Section 1860D–4(e) of the Act specifies that initial standards, which are to be used in a pilot project that is to be conducted in calendar year (CY) 2006, must be developed, adopted, recognized, or modified by the Secretary not later than September 1, 2005. These were publicized in a Request for Application for the pilot project announced on September 14, 2005 (Available through *grants.nih.gov/grants/guide/rfa-files/RFA-HS-06-001.html).* Not later than April 1, 2008, the Secretary must promulgate final uniform standards, which must become effective not later than 1 year after the date of their promulgation. In addition, the Secretary is required to provide a report to the Congress by April 1, 2007 on his evaluation of the pilot project.

On January 28, 2005, we published the Medicare Prescription Drug Benefit final rule (70 FR 4193–4585) that established the Prescription Drug Benefit Program and cost control and quality improvement requirements for prescription drug benefit plans. One of the provisions in that final rule requires Prescription Drug Plan (PDP) sponsors, Medicare Advantage (MA) Organizations offering Medicare Advantage-Prescription Drug (MA-PD) plans, and other Part D sponsors to support and comply with electronic prescribing standards once final standards are in effect, including any standards that are in effect before the drug benefit begins in 2006.

Although there is no requirement that providers write prescriptions electronically, providers that prescribe or dispense Part D drugs would be required to comply with any applicable final standards that are in effect when they conduct electronic prescription transactions, or seek or transmit prescription information or certain other related information electronically.

For a complete discussion of the statutory basis for this final rule and the statutory requirements at section 1860D–4 of the Act, please refer to section I. (Background) of the E-Prescribing and the Prescription Drug Program proposed rule, published February 4, 2005 (70 FR 6256–6264). We requested and received comments on the statutory requirement for industry consultation, adequate industry experience for certain standards, and pilot testing, among other things. Those comments and our responses are addressed in section III. of this final rule.

1. Initial Standards Versus Final Standards

In the proposed rule, we discussed the provisions of section 1860D–4(e) of the Act that distinguish initial standards from final standards. Final standards must be adopted by the Secretary based upon the evaluation of pilot testing or without pilot testing if the Secretary determines there is adequate industry experience for the final standards. The final standards adopted in this rule have not been subject to pilot testing under MMA, due to the determination by the Secretary that there is adequate industry experience with these standards. We refer to them as ''foundation standards'' because they provide a foundation for e-prescribing implementation. Based on industry consensus and recommendations from the National Committee on Vital and Health Statistics (NCVHS), these standards were likely candidates for establishing a foundation for future standards and interoperability. A more detailed discussion of this distinction is available in the E-Prescribing and Prescription Drug Program proposed rule, published February 4, 2005 proposed rule (70 FR 6259).

2. State Preemption

In section I of the proposed rule, we discussed State preemption and the meaning of the statutory language in section 1860D–4(e)(5) of the Act. A more detailed discussion is available in the proposed rule at 70 FR 6258–6259. We solicited and received comments on our proposed interpretation. Those comments and our responses are addressed in section III. of this final rule.

3. Anti-Kickback Statute Safe Harbor and Stark Exception

In the proposed rule, we indicated that we would be proposing a new electronic prescribing (e-prescribing) exception under the physician self-referral law (also known as the Stark law) and a new e-prescribing safe harbor under the anti-kickback statute. We also indicated that, in the meantime, compliance with existing State and Federal laws is required. We solicited comments on the nature and extent of incentives being offered to encourage prescribers to conduct e-prescribing or incentives likely to be offered after rulemaking for the Stark exception and anti-kickback statute. For a more detailed discussion of the Stark exceptions and violation of the anti-kickback statute for e-prescribing please refer to 70 FR 6259.

B. The NCVHS Process

In the proposed rule, we discussed HHS's requirement to consider recommendations of the NCVHS according to section 1860D–4(e)(4)(A) of the Act, and the role of the NCVHS in recommending standards relating to the requirements for an electronic prescription drug program, as outlined in section 1860D–4(e)(4)(B) of the Act.

Section 1860D–4(e)(4)(A) of the Act requires the Secretary to develop, adopt,

recognize or modify initial uniform standards relating to the requirements for an electronic prescription drug program, taking into consideration the recommendations from the NCVHS. It requires that in developing the recommendations, the NCVHS consult with the following:

- Standard setting organizations (as defined in section 1171(8) of the Act).
- Practicing physicians.
- Hospitals.
- Pharmacies.
- Practicing Pharmacists.
- Pharmacy Benefit Managers.
- State Boards of Pharmacy.
- State Boards of Medicine.
- Experts on e-prescribing.
- Other appropriate Federal agencies.

In order to fulfill its responsibilities, the NCVHS's Subcommittee on Standards and Security held public hearings on issues related to e-prescribing on March 30 and 31, 2004; May 25, 26, and 27, 2004; July 28, 29, and 30, 2004; and August 17, 18, and 19, 2004. These hearings included testimony from e-prescribing networks, providers, software vendors, and industry experts on patient safety, drug knowledge data bases, and standards currently in use by the industry. Industry experts involved in e-prescribing studies and initiatives also presented information on the progress and findings of these studies. Following the hearings by the NCVHS Subcommittee on Standards and Security, the Subcommittee developed observations and associated recommended actions and presented them to the full NCVHS Committee for consideration. On September 2, 2004, the NCVHS sent a letter to the Secretary containing the observations and associated recommended actions for an electronic prescription drug program. The document included recommendations for the foundation standards that we are adopting and other long-term recommendations regarding pilot testing of other standards. For specific details, refer to the letter available at *http://www.ncvhs.hhs.gov/040902lt2.htm.*

For a more complete discussion of the NCVHS Process for e-prescribing standards, please refer to the proposed rule (70 FR 6259–6260).

C. Standards Design Criteria

In the proposed rule, we discussed the design criteria for electronic prescription drug program standards specified in section 1860D–4(e)(3)(C) of the Act. The design criteria for electronic prescription drug program standards require that—

- The standards be designed so that, to the extent practicable, they do not impose an undue administrative burden on prescribing healthcare professionals and dispensing pharmacies and pharmacists;
- The standards be compatible with standards established under Part C of Title XI, standards established under section 1860D–4(b)(2)(B)(i) of the Act, and with general health information technology standards; and
- The standards be designed so that they permit the electronic exchange of drug labeling and drug listing information maintained by the Food and Drug Administration (FDA) and the National Library of Medicine (NLM).

D. Current Prescribing Environment

The proposed rule described the processes currently used for writing prescriptions based upon statistical data that is available and information presented in testimony to the NCVHS. For a more detailed discussion of the current process and the reported workflow and administrative inefficiencies that affect costs and quality of care, please refer to section I. of the proposed rule at 70 FR 6260.

E. Current E-Prescribing Environment

In the proposed rule, we discussed the values of e-prescribing in preventing medication errors, statistics concerning certain usage of e-prescribing, and barriers to expanded use of e-prescribing.

The value of e-prescribing in preventing medication errors is that each prescription can be electronically checked at the time of prescribing for dosage, interactions with other medications, and therapeutic duplication. E-prescribing could potentially improve quality, efficiency, and reduce costs by—

- Actively promoting appropriate drug usage, such as following a medication regimen for a specific condition;
- Providing information about formulary-based drug coverage, including formulary alternatives and co-pay information;
- Speeding up the process of renewing medications; and
- Providing instant connectivity between the health care provider, the pharmacy, health plans/PBMs, and other entities, improving the speed and accuracy of prescription dispensing, pharmacy callbacks, renewal requests, eligibility checks, and medication history.

E-prescribing rates vary somewhere between 5 percent and 18 percent for physicians, although usage is slowly increasing. Some of the barriers to increased usage of e-prescribing by physicians are the costs of buying and installing a system, the training involved, time and workflow impact, lack of reimbursement for costs and resources, and lack of knowledge about the benefits related to quality of care. For more details of this discussion, please refer to the proposed rule (70 FR 6260–6261).

F. Evolution and Implementation of an Electronic Prescription Drug Program

In the proposed rule, we discussed our proposal to adopt foundation standards, which are standards that do not need pilot testing because adequate industry experience already exists for these standards. We also proposed criteria that standards must meet to be considered as having ''adequate industry experience.'' For a more detailed discussion, please refer to the proposed rule (70 FR 6261). We invited and received public comments on ''adequate industry experience'', the roles of Standards Development Organizations (SDOs) and the NCVHS in the adoption of e-prescribing standards, and a process for updating existing standards and adopting new standards. Those comments and our responses are addressed in section III. of this final rule.

G. Electronic Prescription Drug Program

In the proposed rule, we discussed the standards that are required for an electronic prescription drug program as required by section 1860D–4(e)(2) of the Act and the standards that we were proposing. We also discussed which standards would be subject to pilot testing, and which standards would be proposed as future standards. For a more detailed discussion of those standards and the table that summarizes the NCVHS recommendations, please refer to the proposed rule (70 FR 6261–6262). We invited and received public comments on the proposed standards as well as on standards that are currently being used in the industry. Those comments and our responses to those comments are addressed in section III. of this final rule.

H. Summary of Status of Standards for an Electronic Prescription Drug Program

In the proposed rule, we acknowledged that the foundation standards we proposed did not address all of the functions required under section 1860D–4(e)(2) of the Act. For a more detailed discussion, please refer to section I. of the proposed rule (70 FR 6264). We requested comments on the proposed standards, as well as our

proposed phased implementation for electronic prescription drug program requirements. We also requested comments on considerations for interoperability and industry-adopted standards for electronic health records (EHRs). The comments, on both these issues, and our responses to those comments are addressed in section III. of this final rule.

II. General Overview of the Provisions of the Proposed Rule

As stated earlier, on February 4, 2005, we published the E-Prescribing and the Prescription Drug Program proposed rule (70 FR 6256–6274), which discussed our proposal to adopt the first set of final uniform standards (or foundation standards) for an electronic prescription drug program under the MMA. In the proposed rule, we stated that these proposed foundation standards would not be subject to pilot testing because they meet the criteria for adequate industry experience. These standards included the National Council for Prescription Drug Programs (NCPDP) SCRIPT version 5.0 for transactions for new prescriptions, prescription renewals, cancellations, changes between prescribers and dispensers, ancillary messages and administrative transactions; the Accredited Standards Committee (ASC) X12N 270/271, version 4010 and version 4010 A1, for eligibility queries between prescribers and Part D sponsors; and the NCPDP Telecommunications Standard, version 5.1, and the NCPDP Batch Standard Batch Implementation Guide version 1.1 supporting the telecommunications standard implementation guide for eligibility inquiries between dispensers and Part D sponsors.

Also, in the proposed rule, we discussed the need for formulary and medication history standards, and that we were not aware of any standards for these transactions that clearly met the criteria for adequate industry experience. Standards for formulary and medication history will be tested in the 2006 pilot project.

In the proposed rule, we proposed to broaden the scope of 42 CFR Part 423, Subpart D for requirements that relate to electronic prescription drug programs for prescribers, dispensers, and Part D sponsors. We also proposed a number of definitions that are pertinent to the e-prescribing process. We also proposed a compliance date of January 1, 2006 for the foundation standards.

III. Analysis of, and Responses to, Public Comments on the Proposed Rule

We received approximately 84 timely items of correspondence containing multiple comments on the proposed rule. Some of the major issues we received comments on included preemption of State laws, the foundation standards, the appropriateness of the implementation date for the foundation standards, and a process for modifying and updating the foundation standards. We also received unsolicited comments, comments not submitted timely, and comments outside the scope of the proposed rule. The relevant and timely comments within the scope of the proposed rule that we received are discussed in the following sections.

Comments and Responses on Provisions of Proposed Rule

As we state in section II. of this final rule, in the February 4, 2005 proposed rule, we discussed—

- Our proposal to adopt foundation standards for an electronic prescription drug program under the MMA;
- Our proposal to broaden the scope of Subpart D, part 423 of the MMA to set forth requirements relating to electronic prescription drug programs for prescribers, dispensers, and Part D sponsors; and
- Our proposal to adopt a number of definitions that are pertinent to the e-prescribing process.

The comments that we received on those proposed provisions and our responses to those comments are outlined in the following sections.

A. Proposed Modification of the Title to Subpart D in 42 CFR Part 423

In the February 4, 2005 proposed rule, we proposed modifying the title of subpart D in 42 CFR Part 423 to read ''Cost Control and Quality Improvement Requirements'' and revising the description of the scope at § 423.150(c).

We received no comments on this proposed modification and, therefore, are changing the title of Subpart D of part 423 to read, ''Cost Control and Quality Improvement Requirements'' in this final rule.

B. Proposed Revision to § 423.150 (Scope)

In the February 4, 2005 proposed rule, we also discussed our proposed revision to the description of the scope at § 423.150(c) to state expressly that this subpart sets forth requirements relating to electronic prescription drug programs for prescribers, dispensers, and Part D sponsors. We did not receive any comments regarding this proposed change and, therefore, we are making this revision in this final rule.

C. Proposed Amendment of § 423.159(a) (Definitions)

In the February 4, 2005 proposed rule, we proposed to amend § 423.159 to add definitions pertinent to the e-prescribing process and to amend the title of the section to be consistent with the term ''Electronic Prescription Drug Program'' which we proposed to define below. The proposed definitions and the comments we received are as follows:

- Dispenser Definition Proposal—In the proposed rule, we defined a ''dispenser'' as a person, or other legal entity, licensed, registered, or otherwise permitted by the jurisdiction in which the person practices or the entity is located, to provide drug products for human use by prescription in the course of professional practice.

Comment: Most of the commenters supported our proposed definition of ''dispenser,'' but some wanted it modified to address explicitly non-dispensing pharmacy activities involved in providing services, such as medication therapy management services required by MMA.

Response: We believe that our definition of ''dispenser'' adequately encompasses dispensing and non-dispensing activities and that it is not necessary to add language to distinguish pharmacist roles within the scope of an e-prescribing environment. Therefore, in this final rule, we are adopting the proposed definition as final.

- Electronic Media Definition Proposal—In the proposed rule, we defined ''electronic media'' as having the same meaning as this term is defined for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In 45 CFR 160.103, electronic media means—
- Electronic storage media including memory devices in computers (hard drives), and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
- Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide open), extranet (using internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being

exchanged did not exist in electronic form before the transmission.

Comment: The majority of commenters supported the proposed definition of ''electronic media''. Some of the commenters recommended that the definition be broadened to include secure wireless communications technologies and other technologies implementing current best practices.

Response: We believe that the term ''electronic media,'' as defined in 45 CFR 160.103, is sufficiently broad to encompass a range of technology advances, including secure wireless technologies. Moreover, our definition is not intended to establish a comprehensive list of, nor intended to identify best practices for, transmission media. Therefore, we do not intend to change our definition to reflect these additions.

Comment: One commenter requested clarification as to whether the term electronic media, for purposes of the proposed rule, includes prescriptions sent by ''electronic facsimile'' to a pharmacy. The commenter believed that including them in the definition would establish uniformity and would make electronic facsimiles subject to the same standards as other electronic prescription transmissions. In addition, several commenters proposed adding a new definition of ''non-EDI message,'' which they defined as being a message that leaves or enters a system (including long-term care facilities and/or pharmacies) as an image, either via fax or e-mail, that is not included in the electronic prescribing standards.

Response: The proposed definition of electronic media for an e-prescribing program is the same definition set forth in 45 CFR 160.103 for HIPAA's transactions and code sets. We have already clarified, by means of HIPAA guidance in a Frequently Asked Question (FAQ) on the CMS Web site (*http://www.cms.hhs.gov/hipaa/hipaa2*), that paper faxes are not considered ''electronic media,'' while computer-generated faxes constitute use of ''electronic media.'' As a result, faxes that are generated by one computer and electronically transmitted to another computer (commonly referred to as computer-generated faxes) would be included under the definition of electronic media for e-prescribing that we proposed.

While we have determined that the NCPDP SCRIPT standard meets the test of adequate industry experience in many e-prescribing applications, in light of the comments received, we now recognize that prescribers using computer-generated faxes to transmit prescriptions to a dispenser's fax machine that prints a hard copy of the original computer-generated fax merits separate consideration. Because this computer-generated transmission started as an electronic version, it would constitute a transmission using electronic media as defined in the proposed rule, and, as a result, would be required to comply with adopted e-prescribing standards.

In some cases, the prescriber's software can generate SCRIPT transactions, but the ability is ''turned off'' because electronic communication with the pharmacy has not yet been established. In other cases, the prescriber uses software (such as a word processing program) that creates and faxes the prescription document, but does not have true e-prescribing capabilities.

In the first case, the prescriber is already conducting e-prescribing, and should do so after the compliance date using the foundation standards. We would expect that the prescriber will establish electronic communication and begin to use the SCRIPT standard with little difficulty.

However, the prescriber in the second case is not actually capable of conducting e-prescribing using the standards being adopted by this rule. That prescriber is merely using word processing software and the computer's fax capabilities in lieu of faxing paper. Requiring these prescribers to convert to e-prescribing using the foundation standards would likely result in their simply reverting to faxing paper. Consequently, requiring these entities to comply with the NCPDP SCRIPT Standard would force the vast majority of them to revert to paper faxes, and, thus, it would impose a significant burden on those entities presently using computer-generated faxing, and would be counterproductive to achieving standardized use of non-fax electronic data interchange for prescribing. Moreover, we believe prescribers using computer fax capabilities will migrate to e-prescribing in time, possibly at the same time as they implement electronic health record systems. Therefore, we adopt an exemption which exempts those using computer-generated faxes from using the NCPDP SCRIPT Standard for transmitting prescriptions and prescription-related information.

We believe this approach is consistent with the statutory direction that the Secretary has to issue uniform standards with the specific objective of improving efficiencies, including cost savings, in the delivery of care, and designed so that the standards, to the extent practicable, do not impose an undue administrative burden on prescribing health care professionals and dispensing pharmacies and pharmacists. We interpret these statutory objectives as enabling us to ensure that existing functionalities and workflow are not disrupted for a large number of prescribers and dispensers. We believe this interpretation is appropriate given the burden that adherence to the statutory requirements would create and based on the requests in comments received in response to the proposed e-prescribing rule. As indicated above, we anticipate that many prescribers and dispensers would revert to handwritten paper prescriptions or computer-generated prescriptions that are printed in hard copy and manually faxed to the dispenser. This practice would stand as a significant obstacle to the broader statutory goals of the electronic prescription drug program provisions, as well as limit the ability of Medicare beneficiaries and the Medicare program to benefit from the patient safety and cost savings anticipated from e-prescribing drugs under Part D of Title XVIII of the Act. However, we encourage all prescribers using fax technology to move as quickly as possible to the use of electronic data interchange via the SCRIPT standard.

- E-prescribing Definition Proposal—In the proposed rule, we defined ''e-prescribing'' to mean the transmission, using electronic media, of prescription or prescription-related information, between a prescriber, dispenser, PBM, or health plan, either directly or through an intermediary, including an e-prescribing network.

Comment: Most commenters supported the proposed ''e-prescribing'' definition. One commenter recommended that the definition of e-prescribing specifically cite ''nursing facility.'' Some commenters recommended the definition be amended to distinguish between the direct entry of prescribers and the direct entry of non-prescribers, such as clerical staff. Concerns were expressed that the definition does not include activities related to electronic claims adjudication. One commenter suggested that the definition for e-prescribing also be clarified to include two-way transmissions between the point-of-care (POC) and the dispenser.

Response: We believe that the term ''e-prescribing'' is broad enough in its scope to effectively encompass multiple transaction processes and participants, which exchange prescription or prescription-related transmissions, whether or not the transmission is conducted directly or through an intermediary. We realize that the business model that is typical in the

Long-Term Care (LTC) environment, where both the prescriber and the facility personnel are customarily involved in the prescribing process, is atypical of e-prescribing in the ambulatory setting. During the pilot project, we are planning to review the business process for e-prescribing in the LTC setting. For further discussion about e-prescribing and LTC and the comments we received, please refer to section F.1. of this final rule.

Electronic claims adjudication and other related administrative functions are outside the scope of e-prescribing as specified in section 1860D–4(e) of the Act. Moreover, a number of transactions standards for these administrative functions have already been adopted in the August 17, 2000 HIPAA Standards for Electronic Transactions and Code Sets Final Rule (HIPAA final rule) (65 FR 50312–50372) and modified in the February 20, 2003 Health Insurance Reform: Modifications to Electronic Data Transactions Standards and Code Sets (68 FR 8381–8399).

• Electronic Prescription Drug Program Definition Proposal—In the proposed rule, we defined ''electronic prescription drug program'' to mean a program that provides for e-prescribing for covered Part D drugs prescribed for Part D eligible individuals who are enrolled in Part D plans.

Comment: The commenters generally supported the proposed electronic prescription drug program definition, but recommended the definition be written in more generic terms without the reference to Part D.

Response: Based on these comments and our interpretation of our statutory authority, we have decided to expand the scope of our definition of electronic prescription drug program to include all Part D eligible individuals, whether or not they are enrolled in a Part D plan. This group is identical to the universe of persons who participate in Medicare (Parts A or B or both). We revised the definition for the electronic prescription drug program at § 423.159 to broaden the scope of an electronic prescription drug program to include Part D eligible individuals, not just Part D enrolled individuals. This is consistent with our interpretation of the statute to expand the scope of preemption of State laws to include, at a minimum, all Part D eligible individuals, as described in section E.1. of this final rule. Therefore, we are adopting the revised definition in this final rule.

• Prescriber Definition Proposal—In the proposed rule, we defined ''prescriber'' to mean a physician, dentist, or other person licensed, registered, or otherwise permitted by the U.S. or the jurisdiction in which he or she practices, to issue prescriptions for drugs for human use.

Comment: Commenters generally supported the proposed definition. One commenter recommended the definition of prescriber remain as defined in the proposed rule so long as the final definition encompasses providers, including Certified Registered Nurse Anesthetists (CRNAs) and others who are not physician providers, but who are granted prescriptive authority through the State in which he/she practices. One commenter recommended that the definition of ''prescriber'' specifically require prescriber order entry, including electronic signature by the actual prescriber. Several commenters recommended that the definition of ''prescriber'' be expanded to include those who prescribe drugs for animal use.

Response: The proposed definition does encompass individuals who are non-physicians, but who are permitted to issue prescriptions for drugs for human use. These non-physician providers could include CRNAs, nurse practitioners, and others. We also believe that it is inappropriate to include specific references to prescribing functions, such as electronic signatures, within this basic definition. We do not believe that there is statutory basis in the MMA to include prescribers of drugs for animal use, as the requirements specified section 1860D–4(e) of the Act, as amended by section 101 of the MMA, expressly provide for e-prescribing for covered Part D drugs for Part D eligible beneficiaries. We are not aware of any authority under which a prescriber of drugs for animal use would be writing prescriptions for part D drugs for Part D eligible beneficiaries, or under which animals were Part D eligible beneficiaries. Therefore, in this final rule, we are adopting the proposed definition as final.

• Prescription-related information Definition Proposal—We proposed that ''prescription-related information'' would mean information regarding eligibility for drug benefits, medication history, or related health or drug information for a Part D eligible individual enrolled in a Part D plan.

Comment: Several commenters recommended amendments to the proposed definition. One commenter recommended that non-dispensing pharmacists (for example, those providing medication therapy management program services) be identified in the e-prescribing program. Several commenters recommended that the definition be written in more generic terms without the reference to Part D, which they felt could be addressed in the definition for electronic prescription drug program. According to these commenters, the additional language would capture Medicaid and other plans that would voluntarily implement e-prescribing efforts based on the proposed regulations. One commenter recommended the ''prescription-related information'' definition be expanded to include drug allergies and personal allergies.

Response: We believe that the proposed definition of ''prescription-related information'' adequately defines different types of information within the scope of the e-prescribing environment intended by the MMA statute. We also believe that the e-prescribing provisions of section 1860D–4(e) of the Act, as amended by section 101 of the MMA apply to pharmacists, both dispensing and non-dispensing, who electronically transmit prescription and certain other information for covered drugs prescribed for Medicare Part D eligible individuals. The statute broadly includes medication history, eligibility, related health or drug information. Furthermore, we believe that ''medication history or related health or drug information'' is sufficient to include drug allergies and personal allergies.

Comment: Some commenters suggested expanding the definition of prescription-related information as discussed in our proposed rule, which limits the scope of prescription information regarding eligibility for drug benefits, medication history or related health or drug information to a Part D eligible individual enrolled in a Part D plan. Some commenters proposed expanding the definition to include all Medicare beneficiaries. Other commenters suggested dropping the reference to Part D to expand the definition to all e-prescribing.

Response: As indicated previously in this final rule, based on the comments we received and our interpretation of our statutory authority, we have decided to expand the scope of our definition to include all Part D eligible individuals, whether or not they are enrolled in a Part D plan. Accordingly, we are revising our definition of prescription-related information to mean information regarding eligibility for drug benefits, medication history or related health or drug information for Part D eligible individuals.

D. Revision to § 423.160 (Standards)

1. General Rules

In the February 4, 2005 proposed rule, we proposed that Part D sponsors would

be required to establish and maintain an electronic prescription drug program that complies with the applicable standards in § 423.160(b) when transmitting, directly or through an intermediary, prescriptions and prescription-related information using electronic media for covered Part D drugs for Part D eligible individuals enrolled in a Part D Plan.

Although we did not receive specific comments on this general rule for Part D sponsors, we did receive many comments related to its scope. In particular, many commenters wanted to expand the scope of e-prescribing in this final rule to include all Medicare beneficiaries and all payers. As indicated previously in this final rule, based on the comments we received and our interpretation of our statutory authority, we have decided to expand the scope of e-prescribing in this final rule to include all Part D eligible individuals, whether or not they are enrolled in a Part D plan. Accordingly, we are revising our general rule for Part D sponsors to state that Part D sponsors must establish and maintain an electronic prescription drug program that complies with the applicable standards in § 423.160(b) when transmitting, directly or through an intermediary, prescriptions and prescription-related information using electronic media for covered Part D drugs for Part D eligible individuals.

In the February 4, 2005 proposed rule, we also proposed a general rule for prescribers and dispensers. We proposed that prescribers and dispensers that transmit, directly or through an intermediary, prescriptions and prescription-related information using electronic media must comply with the applicable standards in § 423.160(b) when e-prescribing for covered Part D drugs for Part D eligible individuals enrolled in a Part D plan. Although we did not receive specific comments on this general rule for prescribers and dispensers, we did receive many comments related to its scope. In particular, many commenters wanted to expand the scope of e-prescribing in this final rule to all Medicare beneficiaries and beyond the Part D program. As indicated previously in this final rule, based on the comments we received and our interpretation of our statutory authority, we have decided to expand the scope of e-prescribing in this final rule to include all Part D eligible individuals, whether or not they are enrolled in a Part D plan. Accordingly, we are revising our general rule for prescribers and dispensers to state that prescribers and dispensers that transmit, directly or through an intermediary, prescriptions and prescription-related information using electronic media must comply with the applicable standards in paragraph (b) of this section when e-prescribing for covered Part D drugs for Part D eligible individuals.

2. Standards

As stated in the February 4, 2005 proposed rule, the Secretary had tentatively concluded that the proposed foundation standards are not subject to pilot testing because adequate industry experience with those proposed foundation standards already exists. We received numerous comments on the proposed foundation standards. Those comments and our responses are discussed below.

a. Prescription Proposal

In the proposed rule, we proposed to adopt, as a foundation standard, the transactions and administrative messages included in the National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard, Version 5, Release 0 (except for the Prescription Fill Status Notification Transaction), to provide for communication of a prescription or prescription-related information between prescribers and dispensers.

Comment: Many commenters supported the adoption of NCPDP SCRIPT as a foundation standard in 2006. NCPDP SCRIPT is the current industry standard for electronically transmitting prescription information from the prescriber to the dispenser.

Although the majority of commenters supported adoption of the NCPDP SCRIPT Standard, some commenters suggested that the foundation standards be included in the pilot project and some recommended a delay in implementation until pilot testing was completed.

Response: We agree that the following transactions of the NCPDP SCRIPT should be one of the foundation standards:

- Get message transaction.
- Status response transaction.
- Error response transaction.
- New prescription transaction.
- Prescription change request and response transactions.
- Prescription refill request and response transactions.
- Verification transaction.
- Password change transaction.
- Cancel prescription request and response transactions.

We are adopting this standard for these specified transactions to be effective on January 1, 2006. We also plan to include it in the pilot project in order to ensure interoperability with the standards being pilot tested.

b. Eligibility Proposal (ASC X12N 270/271 Transaction Version 4010, 4010A1)

In the February 4, 2005 proposed rule, we proposed to adopt, as part of the proposed foundation standards, the ASC X12N 270/271 Transaction Version 4010, 4010A1 (the 270/271 standards) for conducting eligibility and benefits inquiries between prescribers and Part D sponsors.

Comment: The majority of commenters supported the adoption of the ASC X12N 270/271 transaction standard for eligibility inquiries where appropriate. Commenters agreed that the version adopted should be consistent with the version adopted under HIPAA.

A number of commenters suggested pilot testing this standard and delaying implementation of the 270/271 standards to evaluate and test the impact of this transaction on the e-prescribing environment. Comments that supported adoption of the 270/271 standards also stressed the need to provide complete responses on the 271 response.

A few of the commenters opposed adoption of the 270/271 standards because they believe it currently does not accommodate enough of the kinds of information that would be necessary to complete the transaction, such as patient enrollment information that may be required for Part D beneficiaries.

Response: We agree that the 270/271 standards should be one of the foundation standards and we are adopting it in this final rule to be effective on January 1, 2006. We considered the potential shortcomings of the 270/271 standards that a few commenters identified, such as the standards not being sufficiently robust for returning pharmacy-related eligibility information. However, the majority of commenters indicated that the 270/271 standards are adequate and have been successfully implemented in e-prescribing programs. In addition, the 270/271 standards are HIPAA standards and are already in widespread industry use, including in e-prescribing programs. We also will work with Part D plans to assure appropriate implementation of the 270/271 standards.

c. Eligibility Proposal (NCPDP Telecommunication Standard, Version 5.1)

In the February 4, 2005 proposed rule, we also proposed to adopt the NCPDP Telecommunication Standard, version 5.1, for conducting eligibility

transactions between dispensers and Part D sponsors.

Comment: Many commenters agreed that the NCPDP Telecommunications Standard, Version 5.1 should be adopted as a foundation standard. Some stipulated that this version should be adopted as a foundation standard as long as newer versions may be utilized. Other commenters suggested that the implementation of this standard be made voluntary until pilot tested. A few commenters alleged that the standard is not in widespread use within the e-prescribing industry.

Response: The majority of commenters supported the adoption of the NCPDP Telecommunications Standard, Version 5.1. as a foundation standard because it had been successfully implemented in e-prescribing programs. We agree that the standard should be one of the foundation standards, and we are adopting it in this final rule to be effective on January 1, 2006. In addition, the NCPDP Telecommunications Standard v 5.1 is a HIPAA standard that must be used for the relevant electronic transactions and already has adequate industry experience. The use of later versions will be addressed with the comments on version updating and maintenance.

3. Formulary and Medication History

In the February 4, 2005 proposed rule, we discussed how the adoption of formulary representation and medication history would enhance e-prescribing capabilities under Part D by making it possible for the prescriber to obtain information on the patient's benefits, including the formulary status of drugs that the physician is considering prescribing, as well as information on medications the patient is already taking, including those prescribed by other providers. We also discussed the potential for cost savings and quality improvements that could result from the use of formulary and medication history standards. Proprietary file transfer protocols developed by RxHub are currently being used to communicate this information in many e-prescribing programs. The RxHub protocols have been submitted to NCPCP for accreditation, and this process is ongoing. We did not specifically propose adoption of these formats as foundation standards because they did not meet the accreditation criteria. However, we proposed characteristics for formulary and medication history standards, and noted that, if those characteristics were met and there was adequate industry experience with them, we would consider adopting foundation standards for formulary and medication history.

In the interim, the RxHub protocols have taken different routes in terms of accreditation. The medication history protocol is no longer a discrete standard; rather, it was incorporated into the latest version of NCPDP SCRIPT (v. 8.0) as a transaction. This is in NCPDP's formal review process. The formulary and benefits protocol is a discrete standard and is also undergoing NCPDP formal review and ANSI accreditation.

Comment: Commenters generally opposed adoption of the RxHub protocols, even if they became accredited standards. The commenters recommended that those standards be pilot tested. A few commenters supported adoption of the RxHub protocols. No other foundation standards for these functions were proposed by commenters.

Response: In response to many comments about the need for pilot testing the formulary and benefits standard and concerns about its interoperability with other standards, we will not adopt it as a foundation standard, but will include it in pilot testing. However, the transactions may be used voluntarily in the meantime.

We are not adopting the RxHub medication history protocol as a foundation standard because it is included as a transaction in NCPDP SCRIPT v. 8.0, which does not meet the criterion for adequate industry experience. We plan to include that version of NCPDP SCRIPT, including the medication history functionality, in the pilot project.

E. Comments and Responses on Related Issues

In the proposed rule, we requested comments on various issues related to the e-prescribing process. We received numerous comments on those issues and we discuss those comments and our responses in the following section:

1. State Preemption

The MMA addresses preemption of State laws at section 1860D–4(e)(5) of the Act as follows:

''(5) Relation to State laws. The standards promulgated under this subsection shall supersede any State law or regulation that—

(A) Is contrary to the standards or restricts the ability to carry out this part; and

(B) Pertains to the electronic transmission of medication history and of information on the eligibility, benefits, and prescriptions with respect to covered Part D drugs under this part.''

In the February 4, 2005 proposed rule, we proposed to interpret this language as preempting State law provisions that conflict with Federal electronic prescription drug program requirements that are adopted under Part D. This interpretation allows Federal preemption of State laws that are either contrary to the Federal standards or that restrict the ability to carry out (or stand as an obstacle to) the electronic prescription drug program requirements, and that pertain to the electronic transmission of prescriptions or certain information regarding covered Part D drugs (such as medication history) for Part D enrolled individuals.

This is an important issue because there is wide variation among the State laws regarding the extent to which electronic prescribing can be done, what information e-prescriptions must contain, how that information is worded and represented, and whether and how this information can be received into or transmitted from that State. As a result, Part D sponsors may face significant operational barriers and costs in implementing their e-prescribing programs.

We invited public comment on our proposed interpretation of the scope of preemption, particularly with respect to relevant contrary State statutes that commenters believe should be preempted, beyond those that would be preempted under our proposed interpretation. We specifically asked for comment on whether this preemption provision pertains only to transactions and entities that are part of an electronic prescription drug program under Part D or to a broader set of transactions and entities. We also asked for comment on whether this preemption provision pertains to only electronic prescription transactions or to paper transactions as well. The comments that we received in response to our requests and our response to those comments are as follows:

Comment: Some commenters agreed that the MMA's preemption provision would pertain only to electronic prescriptions for Part D enrolled Medicare beneficiaries for drugs covered under Part D, as set forth in our proposed rule. However, many other commenters argued for a broader interpretation of the statute. Some commenters suggested preempting State laws concerning e-prescribing for all drugs that are prescribed for all Medicare beneficiaries. The commenters believed that the narrower interpretation would be unworkable because it would create one set of rules for Part D enrolled beneficiaries and another set for other Medicare

beneficiaries. Since prescribers may not know at the point-of-care whether a Medicare beneficiary is enrolled in Part D, or whether the drug being prescribed would be covered under Part D, they would not know whether State law applied, or was preempted.

Response: Based on these comments, we agree that the preemption provision can be read more broadly than proposed in the February 4, 2005 proposed rule. The scope of preemption includes all Part D-eligible individuals, whether or not they are enrolled in a Part D plan. This group is identical to the universe of persons who participate in Medicare (Parts A or B or both). Since Medicare A or B status is virtually always known or immediately ascertainable by a prescriber, this interpretation will minimize both confusion and mistakes. This is particularly important because the patients themselves may not always know whether they are enrolled in Part D (beneficiaries often know the plan name, but not their enrollment status), but will have a Medicare card and number if they are enrolled in Parts A or B.

The preemption provision and other language in the e-prescribing statute give the Federal government the ability to preempt those State laws that ''restrict the ability to carry out this part'' and ''pertain to the electronic transmission of medication history and of information on eligibility, benefits, and prescriptions with respect to part D drugs under this part'' (section 1860D–4(e)(5) of the Act). This language permits preemption to pertain to more than Part D enrolled individuals. Therefore, we are interpreting section 1860D–4(e)(5) of the Act to preempt all contrary State laws that are applicable to a prescription that is transmitted electronically not only for those individuals who are enrolled in Part D, but for all Part D eligible individuals.

As to our proposal to limit preemption to ''covered Part D drugs,'' we agree with commenters that it will not always be possible for a prescriber to know, in advance, which category a particular drug falls. Indeed, some drugs, such as immunosuppressive drugs, may be reimbursed under either Part D or Part B depending not only on which coverage the patient has, but also on whether the transplant occurred before or after turning age 65. We do not believe that the States have any plausible interest in applying different rules in these situations, or that prescribers should face such uncertainty. Accordingly, we interpret the MMA preemption provision as preempting State laws that restrict the Department of Health and Human Services' (DHHS) ability to carry out electronic prescribing, as specified at section 1860D–4(e) of the Act, and pertain to the electronic prescribing, for Part D eligible individuals, of drugs that may be covered by Part D in at least some circumstances, whether or not that particular prescription is covered under Part D in those specific circumstances.

We have codified the statutory preemption provision found at section 1860D–4(e) of the Act in this final rule. This addition, found at § 423.160(a)(4), is essentially identical to the statutory language.

Comment: Some commenters proposed an even broader interpretation, arguing that preemption should pertain to all e-prescribing, not just to e-prescribing in the Medicare context. They stated that limiting preemption to Medicare would create a ''Medicare silo'' with significantly different rules than for other payers, which would be costly for PBMs, plans, and pharmacies to address and administer. Those commenters believe that one set of rules for all payers would facilitate the adoption of e-prescribing outside the Medicare program. They contend that some States have existing statutory or regulatory barriers that could impede the success of e-prescribing. For example, some State laws were drafted with only paper prescriptions in mind and, thus, may not be well-suited to e-prescribing applications.

Response: We agree that broadening our interpretation of State preemption to include all Medicare beneficiaries and drugs that may be covered by Part D, in at least some circumstances, whether or not that particular prescription is covered under Part D, is consistent with our statutory authority. It also would reduce confusion for prescribers and, therefore, would likely encourage expanded use of e-prescribing and the adopted standards. Therefore, we interpret the MMA's State preemption provision to preempt State laws that are contrary to the e-prescribing standards or restricts the ability to carry out this part for drugs that may be covered under Part D, in at least some circumstances, whether or not that particular prescription is covered under Part D, and that are e-prescribed for any Part D eligible beneficiaries. We also urge States to enact legislation consistent with and complementary to the goals of the MMA's e-prescribing provisions and to remove existing barriers to e-prescribing.

Comment: Several commenters proposed that the preemption should be applied to any State laws that could be considered a barrier to e-prescribing. Some commenters noted that this interpretation would be consistent with their view of the Congress' intent to enable e-prescribing. The commenters suggested preempting a variety of laws, such as those that—

- Prohibit or fail to allow for e-prescribing;
- Establish requirements or standards for e-prescribing content and formats that are inconsistent with current e-prescribing practices in other jurisdictions; and
- Prevent e-prescribing across State lines.

One commenter stressed that State laws also can afford patient safety and quality of care protections and that preempting those laws could adversely affect patient safety and quality.

Response: While these commenters suggested categories of laws that might be preempted, few specific examples emerged. Under our interpretation of the statutory preemption provision, State laws that restrict the ability of entities to electronically prescribe covered Part D drugs for Part D eligible individuals in accordance with the Federal provisions would be preempted. While we agree that some State laws preempted under our interpretation of the statute may have had health or safety objectives, the statutory test is whether those laws are contrary to the standards we adopt or restrict the ability to carry out e-prescribing under Part D, and also pertain to the electronic transmission of prescription-related information. We also note that for a law to ''pertain'' to e-prescribing, it need not specifically single out e-prescribing. Our strategy is to define a general preemption rule in this final rule and identify several specific categories of laws that would be preempted. Preemption of these State laws is necessary because they restrict the ability of entities to electronically prescribe covered Part D drugs for Part D eligible individuals. Further, this preemption is necessary at a minimum in order for Part D sponsors and the providers and pharmacies that choose to e-prescribe covered Part D drugs for Part D eligible individuals to conduct e-prescribing beginning on January 1, 2006. Of course, under the statutory provisions, preemption of State laws that are contrary to these standards, or otherwise restrict the ability to carry out e-prescribing, will be effective upon the effective date of this regulation.

We also anticipate that, as problems are identified with particular State laws or practices, some States will enact laws to address specific patient safety or confidentiality concerns that will not be contrary to, or restrict the ability to

carry out, the requirements of this final rule. We encourage States to consider the impact on Federal e-prescribing standards of laws that could directly or indirectly impede the adoption of e-prescribing technology and standards on a statewide and national basis. We also urge States to enact legislation consistent with and complementary to the goals of the MMA's e-prescribing provisions. This includes removing existing barriers to e-prescribing. We believe that, under this approach, we can achieve national uniformity in e-prescribing standards and practices, while preserving the maximum reasonable autonomy for State-specific practices that do not consequentially hamper e-prescribing. If other State laws also stand as an obstacle to Congress's goal of implementing uniform e-prescribing standards that are to be used in electronic prescribing of Part D covered drugs for Part D eligible individuals, we can reevaluate the scope of preemption that is warranted when we adopt additional standards or in future rulemaking.

At this time, we have identified several categories of State laws that are preempted, in whole or in part, upon the effective date of this final rule. These categories are intended to be examples and do not constitute an exhaustive list. However, they are illustrative of the examples identified through NCVHS testimony and comments received in response to our proposed rule; our application of the MMA's preemption provisions to those State laws are based on our interpretation of the statute, in which State laws would be preempted if they restrict the ability of entities to electronically prescribe covered Part D drugs for Part D eligible individuals in accordance with Federal provisions. It is important to note that those State laws are preempted to the extent that they pertain to covered Part D drugs that are electronically prescribed for Part D eligible individuals. A State law, whether or not it includes an e-prescribing standard, can be preempted if it is contrary to the adopted standards or restricts the ability to carry out Part D standards, and pertains to electronic transmission of prescription-related information. Those categories of State laws are as follows:

- State laws that expressly prohibit electronic prescribing.
- State laws that prohibit the transmission of electronic prescriptions through intermediaries, such as networks and switches or PBMs, or that prohibit access to such prescriptions by plans or their agents or other duly authorized third parties.
- State laws that require certain language to be used, such as dispense as written, to indicate whether generic drugs may or may not be substituted, insofar as such language is not consistent with the adopted standard.
- State laws that require handwritten signatures or other handwriting on prescriptions.

We interpret the MMA preemption provision to preempt State laws that prohibit e-prescribing. Such laws would clearly restrict the Department's ability to carry out the e-prescribing program for Part D, and they pertain to the electronic transmission of prescription and prescription-related information for covered Part D drugs. The application of this preemption provision is necessary for e-prescribing to occur for covered Part D drugs for Part D eligible individuals.

We interpret the MMA preemption to preempt laws that prohibit transmission of electronic prescriptions through intermediaries because they would effectively preclude e-prescribing since establishing direct connectivity between each prescriber and each pharmacy is impractical, according to NCVHS testimony and information from other sources. In addition, this is current industry practice, and Part D plans may in many cases use software systems that rely on third party processing e-prescriptions either simultaneously or before they reach pharmacies. Without preemption, this type of law would restrict the ability to carry out e-prescribing for Medicare Part D because prescribers would be unable to e-prescribe covered Part D drugs for Part D eligible individuals.

We interpret the preemption provision to preempt State laws that establish specific generic substitution language to the extent that such a requirement is not consistent with an adopted standard—that is, where an adopted standard does not permit use of specific generic substitution language or where the State requires that the language be placed at a specific location on the prescription. Such requirements would be contrary to adopted standards and restrict the ability of Part D sponsors to conduct e-prescribing in accordance with the adopted standards.

Lastly, we interpret the preemption provision to preempt State laws that require handwritten signatures or other handwriting on prescriptions. Those laws restrict e-prescribing for Part D covered drugs for Part D eligible individuals because they introduce manual requirements and a resulting paper product into the electronic prescribing process, which effectively prevents the prescription from being transmitted electronically from the prescriber to the pharmacy as required by this final rule. As a result, these State laws restrict the ability of entities to electronically prescribe covered Part D drugs for Part D eligible individuals in accordance with Federal provisions.

Comment: Several commenters suggested that the MMA e-prescribing provision should preempt State laws that affect the security of prescription information and patient privacy.

Response: The security of electronic prescriptions and the protection of electronic prescription information must meet the requirements set forth under HIPAA's administrative simplification provisions for the protection of protected health information (PHI) and electronic protected health information (EPHI) (see 45 CFR Parts 160 and 164) since, so far as we can determine, entities that conduct e-prescribing transactions under this final rule will be covered entities under HIPAA and the information contained in these transactions is PHI and EPHI.

Because HIPAA's privacy requirements are a floor, some States have additional privacy requirements that remain in effect, such as those laws requiring electronic or digital signatures and prescriber authentication, and those restricting the release of medication information for certain sensitive medical diagnoses, such as substance abuse disorders and HIV/AIDS, without patient consent. State privacy laws that are not contrary to the HIPAA Privacy Rule will also be in effect. Because it is not clear that all variations in State privacy laws negatively impact e-prescribing, no preemption determination can be made categorically at this time. Variations in privacy laws within and among States will be assessed in the broader context of EHRs. When specific State privacy laws are identified, we will be able to assess their impact on e-prescribing under this or any other preemption analysis.

Comment: Several commenters requested preemption of State laws affecting electronic transmission of prescriptions for controlled substances. Other commenters urged HHS to work with the Drug Enforcement Administration (DEA) to develop guidance on electronic signature requirements for controlled substances.

Response: HHS and the DEA are working together to address the intersection of the Controlled Substances Act and regulations issued thereunder and rules regarding e-prescribing issued pursuant to the MMA.

Comment: One commenter pointed out that many States require that Medicaid prescriptions must have a prescriber's handwritten statement across the prescription, if a brand name prescription is required when a generic drug is available. Even the wording is dictated.

Response: The MMA transfers payment responsibility for the prescription drugs of dually eligible Medicaid and Medicare enrollees from Medicaid to Medicare. However, some States will provide additional prescription drug coverage for other Part D beneficiaries for drugs that would otherwise be paid out-of-pocket. If any State law or regulation prohibited a brand name drug prescription for prescriptions for these Part D eligible beneficiaries without a ''handwritten'' statement, the requirement that the statement be handwritten (but not the requirement for a written statement) would be preempted.

2. Anti-Kickback Statute Safe Harbor and Stark Exception

As stated earlier in this preamble, in the proposed rule, we indicated that we would be proposing an e-prescribing exception under the Stark law and an e-prescribing safe harbor under the anti-kickback statute. We also indicated that, in the meantime, compliance with existing provisions is required. We also solicited comments on the nature and extent of incentives being offered to encourage prescribers to conduct e-prescribing or incentives likely to be offered after rulemaking for a Stark exception and an anti-kickback safe harbor. We received many comments on this issue.

Comment: Commenters requested this regulatory guidance and noted that the lack of it is a barrier to adoption of e-prescribing.

Response: We agree that guidance is needed and two proposed rules have been issued. The Physicians' Referrals to Health Care Entities with which They Have Financial Relationships—E-Prescribing Exceptions proposed rule, which proposed new exceptions to the Stark law for e-prescribing and electronic medical records, published in the **Federal Register** on October 11, 2005. The Medicare and State Health Care Programs; Fraud and Abuse: Safe Harbor for Certain Electronic Prescribing Arrangements under the Anti-Kickback Statute proposed rule, published in the **Federal Register** on October 11, 2005, proposed new safe harbors under the anti-kickback statute for e-prescribing and electronic medical records.

3. Three Criteria for Assessing Adequate Industry Experience

In the February 4, 2005 proposed rule, we discussed adopting the following three criteria for assessing adequate industry experience:

- Approval by an ANSI-accredited SDO to assure consideration of industry requirements.
- Implementations among multiple partners to assure interoperability.
- Recognition by key stakeholders to assure industry recognition of a single standard.

Comment: One commenter proposed that standards meeting some, but not all, of the criteria be recognized as ''draft standards for trial use'' (DSTU) on a voluntary basis. Some SDOs use the concept of DSTU to permit interested parties to test new standards prior to their final voting process.

Response: This suggestion presumes a category of standards that would fall outside the structure of the MMA and we, therefore, cannot accommodate it. The MMA does not recognize the concept of DSTUs, and for purposes of standards development and implementation, it characterizes standards as either final (to be implemented) or initial (to be pilot tested). The standards adopted in this final rule are the first set of final standards. In addition, NCPDP's procedures, unlike those of other SDOs, do not recognize DSTUs. However, we encourage the voluntary adoption of e-prescribing standards that are not adopted as final standards.

Comment: Several commenters generally supported the proposed criteria. Many of the commenters specifically favored the requirement for ANSI accreditation, although a few commenters indicated that this requirement was unnecessary and that the remaining two requirements were adequate. Some commenters felt that the criteria were not strong enough to demonstrate widespread utilization throughout the health care industry and thus were not an adequate substitute for pilot testing, particularly in light of the short implementation deadline for the Part D benefit.

Response: Based on the majority of comments we received in response to the proposed rule, we believe the proposed criteria for assessing adequate industry experience are valid, and will assure that foundation standards adopted in this final rule are consistent with them. Therefore, we will continue to use these criteria to assess adequate industry experience for future standards.

4. Medical History

Medical history broadly relates to information about a patient's health care and health status. We did not propose standards for communicating medical history in the February 4, 2005 proposed rule. Section 1860D–4(e)(2)(B) of the Act treats the electronic transmission of medical history differently from the electronic transmission of other information in an electronic prescription drug program in that it explicitly states that the medical history provision shall be effective ''on and after such date as the Secretary specifies and after the establishment of appropriate standards.''

Comment: A few commenters suggested that POC checking should include allergy/intolerance checking, validation of patient, and confirmation that a prescription is linked to a patient problem list. Moreover, the commenters recommended that an e-prescribing system provide physicians with information needed to discuss drug therapy with the patient at the POC.

Response: Because we currently are not aware of any medical history standards, we are, therefore, not adopting any at this time. However, we welcome industry suggestions for those standards that we might consider at a future time.

5. RxNorm

RxNorm is a standardized nomenclature for clinical drugs that is produced by the National Library of Medicine. While RxNorm was not explicitly discussed in the February 4, 2005 proposed rule, it was referenced in the table of potential standards contained in section G. of that proposed rule (70 FR 6262) because the NCVHS recommended that the 2006 pilot project include the RxNorm terminology. Efforts to map RxNorm to other terminologies are currently underway.

Comment: While many commenters recognized the potential advantages of RxNorm, they recommended pilot testing the RxNorm terminology because it is not established as a recognized industry standard and needs to be tested in a variety of practice settings. Several commenters recommended accelerating the RxNorm project. One commenter reported that two commercial database vendors are concerned that RxNorm may be incomplete. They suggested that RxNorm's content be validated for completeness and to assure that the code set accurately conveys the drug that the prescriber intends to prescribe, and that a translation table between

RxNorm and the commercial database publishers be developed.

Response: We plan to include RxNorm in the 2006 pilot project to determine its interaction with commercial data bases and certain drug labeling initiatives, to determine whether it translates to the National Drug Code (NDC) for new prescriptions, renewals and changes; and to test RxNorm's completeness and interoperability in the e-prescribing environment.

6. Provider Identifier

In the February 4, 2005 proposed rule, we discussed the salient issues regarding provider identifiers for the Medicare e-prescribing program. NCVHS recommended the use of the National Provider Identifier (NPI) as the primary identifier for dispensers and prescribers once it becomes available. CMS began issuing NPIs on May 23, 2005. However, the use of the NPI in HIPAA standard transactions is not required by regulation until May 23, 2007 (May 23, 2008 for small health plans). We indicated that we were considering requiring the use of the NPI in an electronic prescription drug program as of January 1, 2006, well in advance of the HIPAA regulatory requirements. We noted that accelerating NPI usage for e-prescribing may not be possible, as we may not have the capacity to issue NPIs to all providers involved in the e-prescribing program by January 1, 2006. We also solicited comments on the availability of alternative identifiers that could be adopted as a standard.

Comment: Most of the commenters agreed that the NPI should eventually be the standard provider identifier for use in e-prescribing transactions. There also were some commenters who felt that the NPI needed to establish a proven track record, and should be included in the 2006 pilot project.

Response: We agree that the NPI should be the standard identifier for e-prescribing. It already is a HIPAA standard identifier that must be used in standard transactions, which means that covered entities (including Medicare, Medicaid, private insurers, clearinghouses, and other covered entities) must accept and use NPIs for covered HIPAA transactions by May 23, 2007, and May 23, 2008 for small health plans. Because the NPI is a new identifier and has not been used in the e-prescribing context, we will include it in the 2006 pilot project to determine how it works with e-prescribing standards that will be assessed. This also will allow for provider testing and phase-in.

Comment: The majority of commenters said that the NPI should not be required for use until the May 2007 (or May 2008 for small health plans) HIPAA regulatory compliance dates. They indicated that there is a need for sufficient time for all providers to obtain NPIs since enumeration began on May 23, 2005. They stated that the industry has been preparing for the 2007 (and 2008 for small health plans) compliance dates, and any change to those dates will cause major disruption.

Response: We agree that a transition period is needed. CMS will transition to the NPI when compliance for most covered entities is mandated in May 2007 (May 2008 for small health plans). The NPI will not be required for use in e-prescribing transactions until the May 2007 date (May 2008 for small health plans). As a result, we will not adopt a specific standard identifier for prescribers or pharmacies conducting e-prescribing for Medicare beneficiaries prior to the NPI dates. The NPI will be tested in the 2006 pilot project.

Comment: Commenters had a variety of suggestions for alternative identifiers that could be used in Medicare e-prescribing on an interim basis. These included the NCPDP provider number, the HCIdea number, Medicare provider identifiers, the DEA number, and proprietary numbers. However, not one of these identifiers is assigned to all pharmacies and prescribers in the United States.

Response: Until May 2007, entities that want to e-prescribe for Medicare beneficiaries may use other identifiers as specified by CMS in program instructions. Details are in CMS' ''Instructions: Requirements for Submitting Prescription Drug Event Data'' (June 24, 2005) available at *http://www.cms.hhs.gov/pdps/revisedinstrs062305.pdf*.

7. Prior Authorization

Prior authorization is the protocol used between a prescriber and payer to determine, in advance, if a particular treatment medication, procedure, service, or device will be covered. Numerous drugs, supplies, and medical services are only covered for certain conditions or under special circumstances, and require coverage authorization by a health plan prior to administration.

Because we are not aware of a prior authorization standard that incorporates real-time prior authorization functionality with messages for drugs, we did not propose adopting a prior authorization foundation standard.

However, in the February 4, 2005 proposed rule, the table that summarized the NCVHS recommendations indicated that we should support the ASC X12N efforts to incorporate real-time prior authorization functionality in the ASC X12N 278 Health Care Services Review transaction (70 FR 6262).

Comment: All of the comments that we received on this subject supported pilot testing a proposed formulary and benefit standard that includes some measure of electronic prior authorization support. Also, the commenters suggested that electronic prior authorization information should include specific clinical requirements or rules, so that the prescriber would know what information was needed prior to submitting an authorization request. A number of the comments stressed the importance of a prior authorization standard to an electronic prescribing system for improving workflows and ensuring appropriate drug utilization.

Response: We agree with the comments that supported adoption of a prior authorization standard. We also are aware of further development of the ASC X12N 278 Health Care Services Review Transaction and will be pilot testing it for e-prescribing prior authorization in 2006. We will not adopt a standard for prior authorization transactions at this time.

8. Fill Status Notification

While fill status notification was not discussed at length in the proposed rule, it was mentioned in the discussion of the NCPDP SCRIPT standard (70 FR 6265–6266). In addition, because the NCVHS recommended that it be included in the 2006 pilot project, fill status notification was referenced in the table in section I.G. of the proposed rule (70 FR 6262).

Comment: A commenter expressed their disappointment that we decided not to include the NCPDP SCRIPT fill status notification transaction in the 2006 pilot project as this standard has the potential of significantly improving the health of Medicare beneficiaries.

Response: As we mentioned, while we do not think there exists adequate industry experience for this transaction to meet the criteria for a foundation standard, we will be testing the standard in the 2006 pilot project.

9. Pilot Testing

Section 1860D–4(e) of the Act includes an exception to the pilot testing requirement for standards with adequate industry experience.

Comment: Many commenters recommended that all standards be pilot tested to ensure that standards work in multiple environments including

settings where there are three-way transactions. Other reasons cited for pilot testing all standards include the following:

- To determine that an undue burden is not imposed on specific entities.
- To ensure that standards are useful and efficient for the e-prescribing process.
- To ensure that standards function in a manner that enhances the prescribing process.
- To determine if standards are functional and interoperable.

Other commenters warned that if standards are implemented without pilot testing, there will be more electronic errors, less effective prescribing safeguards, or increased system vulnerability and instability. Another commenter added that if the functionalities of the standards are not perfected, frustration could lead to a reduction or cessation of e-prescribing.

Response: We agree that pilot testing all of the standards may provide useful information for the implementation and operation of a multifunctional e-prescribing system. We note that, while we will be including the foundation standards in the pilot project, we do not consider them to be initial standards to be tested. We are including them solely to ensure their interoperability with the various other standards, including both the initial standards and other foundation standards. Moreover, because of interoperability concerns, the pilot project will include both new and emerging standards, as well as established standards for additional functionalities that are not in widespread use. If the standards testing is unsuccessful, we will work with the industry to correct any outstanding issues.

10. Version Updating and Maintenance

In the February 4, 2005 proposed rule, we proposed to adopt specific versions of the foundation standards. However, we also proposed that if standards are updated and newer versions are developed, HHS would evaluate the changes and consider how and when to adopt new updates to the standards. HHS anticipates, as appropriate, updating adopted standards through the incorporation by reference update process, which provides for publishing an amendment to the Code of Federal Regulations (CFR).

When updating a standard, we will look at a variety of factors to consider how the update should occur. If the Department intends to impose new requirements on the public, we would go through notice and comment rulemaking. If, on the other hand, the updates or newer versions simply correct technical errors, eliminate technical inconsistencies, or add functions unnecessary for the specified e-prescribing transaction, the Secretary would consider waiving notice and comment under an Administrative Procedure Act exception to the requirement for notice and comment rulemaking. In the latter case, we would likely adopt the version that was previously adopted as well as the new version. This would mean that compliance with either version for a covered transaction would constitute compliance with the standard.

When determining whether to waive notice and comment and whether to incorporate by reference multiple existing versions, we would consider the significance of any corrections or revisions to the standard as well as whether the newer version is ''backward compatible'' with the previously adopted version. Backward compatible means that the newer version would retain, at a minimum, the full functionality of the version previously adopted in regulation, and would permit the successful completion of the applicable transaction with entities that continue to use the previous version.

We noted, however, that if an e-prescribing transaction standard had also been adopted under the 45 CFR parts 160 through 162, the updating process for the e-prescribing transaction standard would have to be coordinated with the maintenance and modification of the applicable HIPAA transaction standard. In the proposed rule, we also sought comment on whether we should simply reference the relevant HIPAA standards so that the e-prescribing standards would be updated automatically in concert with any HIPAA standard modification. In addition, we invited public comment on how to establish a process to assess new and modified standards consistent with the Administrative Procedures Act and other applicable legal requirements, and specifically invited comment regarding the role of industry SDOs and the NCVHS. This final rule adopts and incorporates by reference the relevant HIPAA transactions standards (the X12N 270/271 and the NCPDP Telecommunication Standard). In doing so, whenever these HIPAA transactions standards are modified, the parallel e-prescribing standards would likewise be modified through a separate rulemaking.

Comment: Many commenters recommended that the process of maintenance and modification of standards should not be hindered by extensive rulemaking. They cited industry experience with HIPAA, and pointed out that the update process precludes even voluntary adoption of newer versions, which stifles progress and innovation. They also supported our proposal of permitting voluntary implementation of later versions if they are backward compatible. Some commenters advocated permitting use of older standards for a period of time after new versions are adopted, while a few commenters recommended that all revisions be accomplished through notice and comment rulemaking.

Response: We agree with the majority of commenters who stressed that the process for adopting new versions of standards must keep pace with industry needs. We also recognize the need to maintain an open process for assessing changes to assure that various viewpoints are considered. However, we are bound by law to comply with the Administrative Procedure Act. Therefore, we will establish a review process to determine—

- Whether a standard should be updated with a new version; and
- Whether the update would necessitate notice and comment rulemaking.

Where it is determined that the notice and comment rulemaking is not required, the new version will be adopted by incorporating the new version by reference, through a **Federal Register** notice. In that case, use of either the new version or the older version would be considered compliant. We would subsequently conduct a rulemaking prior to requiring the use of the newer version and retiring the older version on a specific date.

Where notice and comment rulemaking is required, compliance with the new version will be mandated only after notice and comment rulemaking. We anticipate that such a regulation will provide for an implementation period during which either version of the standard may be used. After that period and on a date specified in the subsequent final rule, only use of the new version would be considered compliant.

Comment: Several commenters wanted to know details concerning the process by which new versions would be assessed to determine whether rulemaking would be waived. Some of the commenters suggested that HHS should make this determination, while others stated that the relevant SDOs were best equipped to make this assessment. Still others suggested that NCVHS facilitate this discussion.

Response: Under the Administrative Procedure Act, only the Secretary may make the decision to waive notice and comment rulemaking. Additionally, the

Secretary will ensure that any newer version that incorporates significant changes from the prior version undergoes notice and comment rulemaking before industry compliance is required. However, we acknowledge the need to elicit input from interested parties. Therefore, we will ask the NCVHS to assess new versions of standards as they are developed, obtain input from SDOs and other organizations, and provide recommendations to the Secretary regarding whether the new versions should be adopted. We do not anticipate that the Secretary would waive notice and comment rulemaking in any case where a new version is not backward compatible with the most recent prior adopted version. Additionally, the Secretary would ensure that any newer version that incorporates substantive changes from the prior version undergoes notice and comment rulemaking prior to the industry being required to comply with it. We believe that affected organizations will be adequately protected by this process because adoption of the new version would be voluntary in cases where rulemaking is waived.

Comment: Several commenters requested that we explicitly state that entities that voluntarily adopt later versions of standards that are backward compatible must still accommodate the earlier version without modification. For example, a plan that adopts a later version could not require its trading partners to adopt the later version, and could not require its partners to modify their implementations of the earlier version.

Response: We agree. Since in this situation both versions of the standard would be compliant, trading partners that voluntarily adopt the later version must continue to accept the earlier version without alteration until the older version is officially retired.

Comment: Several commenters wanted to know who should participate in the process of assessing new versions of standards. A number of the commenters suggested collaboration between HHS and the SDOs, while others suggested that the NCVHS also be involved. Another commenter recommended that no update process be specified until we have additional experience with the e-prescribing standards.

Response: We agree with the majority of the commenters that a process must be put into place now. We will, therefore, utilize the process described above, with the NCVHS providing recommendations to the Secretary for decision after obtaining industry input. We acknowledge that there may be a need for future revisions to the process.

Comment: A number of commenters addressed the fact that several of our proposed foundation standards (the X12N 270/271 and the NCPDP Telecommunication Standard) had already been adopted as standards under HIPAA. They noted that the HIPAA modification process does not currently permit even voluntary adoption of newer versions of the standards without rulemaking. Some commenters advocated extending the ability to voluntarily adopt new versions of the final uniform foundation standards that are also HIPAA standards to provide the maximum benefit from this flexibility. Others recommended that the adoption of new versions be limited to final standards, including the foundation standards, to synchronize use around a single version.

Response: We believe the first approach, which would permit voluntary use of newer versions, would be inconsistent with current HIPAA regulations, and, HIPAA covered entities may use only the versions of the 270/271 and NCPDP Telecommunications standards that are adopted under 45 CFR Part 162. We are assessing a number of proposals for making the HIPAA standards modification process more flexible.

Comment: A number of commenters recommended developing a predictable cycle for the update process, and other commenters specifically recommended an annual cycle.

Response: We agree that a predictable update cycle would facilitate planning and budgeting for plans and providers. To the extent possible, we will work with the SDOs and NCVHS to establish a timetable for such deliberations.

Comment: While we did not propose a process for maintaining vocabulary and code set standards, commenters specifically favored an open updating process for vocabulary and code set standards similar to the process in place today for HIPAA standard code sets. Under this process, vocabulary and code set maintenance could be accomplished by their maintainers without respect to the version updating process. This process permits flexibility to respond quickly to new concepts.

Response: We did not propose vocabulary and code sets in our proposed rule, nor are we adopting any in this final rule. When we do propose vocabulary and code sets, we will propose a process for their updating and maintenance.

11. Interoperability/EHR

We proposed adopting foundation standards that are ANSI accredited and have adequate industry experience as a means of facilitating interoperability for Electronic Health Records (EHRs). We also asked for comment on how e-prescribing functionality and our incremental approach to implementing e-prescribing relates to a comprehensive EHR system and interoperates across software and hardware products.

Comment: The majority of commenters supported our approach toward achieving interoperability by requiring ANSI accreditation and establishing criteria that demonstrate adequate industry experience. Some of the commenters suggested that we broaden our approach to include various settings, such as long-term care. One commenter did not support our approach because the proposed foundation standards allegedly have not been adequately tested together in a wide range of settings. This commenter also suggested that we conduct a pilot project to assess the overall impact of e-prescribing on Medicare and on other payers and patient populations.

Response: We agree that e-prescribing functionality should be an essential component of a comprehensive EHR system and that it must interoperate across various software and hardware products and various care settings to be effective. Our incremental approach toward adoption of e-prescribing standards, along with the 2006 pilot project, will address interoperability across software and hardware products in a variety of care settings.

Comment: We received several comments concerning timing. The commenters recommended that implementation of e-prescribing and EHR standards occur at various, independent stages without halting current e-prescribing development. Some commenters suggested postponing the establishment and adoption of standards for e-prescribing until a time when there are commonly accepted industry standards for EHRs, so that standards for the interoperability of e-prescribing and EHR systems could be established at the same time.

Response: We believe that our incremental approach to adopting e-prescribing standards for use in the Medicare Part D benefit will be viewed as an initial step and facilitate the development of EHR standards, thus, promoting interoperability in the short and long terms.

Comment: One commenter recommended that the Federal government use the Integrating the

Healthcare Enterprise (IHE) process. This promotes the coordinated use of established standards, such as DICOM and HL7, to address specific clinical needs.

Response: IHE is an initiative by healthcare professionals and the industry to improve the way computer systems in healthcare share information. IHE promotes the use of established standards to address specific clinical needs in support of optimal patient care. While we do not specifically participate in the IHE and we believe this comment is beyond the scope of the proposed rule, we nonetheless support and participate in projects that foster the coordination of standards across the health care enterprise such as through the SDO process.

12. Closed Enterprise

In the February 4, 2005 proposed rule, we solicited comment on whether Part D plans should be required to use the standards for e-prescribing transactions taking place within their own enterprises, the potential implications (including timing) of required compliance with adopted standards for these transactions, the extent to which these entities exist, and the advantages and disadvantages associated with excluding these transactions from the requirement to comply with adopted e-prescribing standards. Under the HIPAA transactions rule, it is immaterial whether the transmissions are within a corporate HIPAA covered entity or between two different entities; compliance with the HIPAA transactions standard is required.

Comment: One commenter recommended that both HL7 and NCPDP SCRIPT be allowed for any prescription transactions, with usage based on trading partner agreements. Several commenters recommended that HHS view the exchange of prescription transactions that occur ''within the same enterprise'' as being outside the scope of the MMA. Another requested that HHS clarify the definition of a ''closed enterprise'' for purposes of identifying prescription transactions within an enterprise that fall outside the scope of the MMA. One commenter did not believe that closed enterprises should be exempt from following the standards, noting that HIPAA applies to transactions in open and closed environments.

Response: To clarify our use of the term ''closed enterprise'' in the February 4, 2005 proposed rule, we intended ''closed enterprise'' to mean a discrete legal entity that may serve as a closed network, such as a staff model HMO, which seeks to conduct e-prescribing within the confines of the enterprise. To avoid any confusion, we have steered away from using the term ''closed enterprise'' in this final rule and have stated explicitly that in line with the NCVHS recommendation and comments received, entities may use either HL7 or NCPDP SCRIPT Standard to conduct internal electronic transmittals for the specified NCPDP SCRIPT transactions. For example, there are many entities, such as staff model HMOs, in which all parties to the transaction, including the prescriber and the pharmacy, are employed by, and part of, the same legal entity. The NCVHS recommended that these organizations not be required to convert to the adopted standard (NCPDP SCRIPT) for prescription communications within their enterprise because these closed systems typically utilize HL7 messaging. However, if they send prescriptions outside the organization (for example, from an HMO to a non-HMO pharmacy) they would be required to use the adopted standards.

We acknowledge the NCVHS recommendation. Thus, MA–PDs and PDPs continue to use HL7 messages for electronic prescriptions sent and received within the same legal entity. This requirement differs from the HIPAA requirement which sets the same standards for internal and external transactions and which will continue to apply to HIPAA transactions, even if the HIPAA transactions are used in e-prescribing. We will require entities to use NCPDP SCRIPT if they electronically send prescriptions for Medicare beneficiaries outside the organization, such as to a non-network pharmacy. Any pharmacy, even if it is part of a larger legal entity must be able to receive electronic prescription transmittals for Medicare beneficiaries via NCPDP SCRIPT from outside the enterprise.

Comment: Another commenter suggested that the February 4, 2005 proposed rule be modified to either allow for the use of both transactions by large institutions, or to allow for the use of an intermediary to translate the HL7 pharmacy order messages to the required NCPDP format that will reach the sponsor or dispenser.

Response: Entities may use HL7 and NCPDP SCRIPT to conduct internal electronic prescription transmittals. We have, therefore, provided an exemption in this final rule for entities to conduct internal transactions using either the NCPDP SCRIPT or HL7, which would otherwise be required to comply with the NCPDP SCRIPT. However, electronic prescriptions sent to pharmacies for Medicare beneficiaries outside the institution or enterprise network must be converted to NCPDP SCRIPT; a clearinghouse or other intermediary may be used for translation purposes.

13. NCVHS Process

The Secretary is required to develop, adopt, recognize or modify initial uniform standards relating to the requirements for an electronic prescription drug program taking into consideration recommendations, if any, from the NCVHS.

Comment: Several commenters were in favor of the process used by the NCVHS in recommending e-prescribing standards to the Secretary and supported the criteria developed to determine whether a standard demonstrated adequate industry experience. There was general agreement among the commenters that the NCVHS has helped set the path for the e-prescribing environment. Some of the commenters expressed support for the NCVHS process, and the opportunity to participate with the NCVHS and CMS on developing and adopting the standards required for an electronic prescription drug program. A number of commenters suggested that the NCVHS determine if an approved change to a standard is substantive and requires rulemaking. There also were some commenters that recommended that the NCVHS consult with CMS on when rulemaking can be waived for standard updates.

Response: We agree with the commenters on the usefulness of the NCVHS process in recommending e-prescribing standards to the Secretary. The NCVHS will continue to conduct hearings on e-prescribing standards to ensure input and participation with industry stakeholders, and will continue to consult with CMS on the development and updates for e-prescribing standards. We note, however, that the Secretary will determine what is required to comply with the law.

14. Privacy/Security

In the February 4, 2005 proposed rule, we stated that it should be noted that disclosures of protected health information (PHI) in connection with an e-prescribing transaction would have to meet the minimum necessary requirements of the Privacy Rule if the entity is a covered entity (70 FR 6261). We also noted that entities that are covered entities under HIPAA must continue to abide by the applicable HIPAA standards, including those for privacy and security. Although we did not request comments on e-prescribing

privacy and security, we received several comments on the topics.

Comment: Several commenters were concerned about the protection of patient privacy and the confidentiality of patient data, in both the patient care and research settings. The commenters also were concerned about assuring the security of, and authorized access to, transactions among prescribers, pharmacies and health plans. For example, some of the commenters suggested higher levels of security, such as digital and electronic signatures (including public key infrastructure, or PKI).

Response: We agree that privacy and security are important issues related to e-prescribing. Achieving the benefits of e-prescribing requires the prescriber and dispenser to have access to medical history and other patient medical information that may not have been previously available to them. Section 1860D–4(e)(2)(C) of the Act requires that disclosure of patient data in e-prescribing must, at a minimum, comply with HIPAA's privacy and security requirements. Pharmacists generally are responsible under State laws for ensuring the authenticity and validity of prescriptions. Based upon extensive testimony and consultation with industry experts such as the National Institute of Standards and Technology (NIST), the American Society for Testing and Materials (ASTM), and leaders in the financial services industry, the NCVHS did not recommend any standards relating to e-prescribing security at this time. We agree that a standard for the security of prescriptions and related information is essential, but we are not adopting specific standards for security technology at this time because we are not aware of any such standards with adequate industry experience. It is important to note that health plans, prescribers, and dispensers are HIPAA covered entities, that must comply with the HIPAA security standards. Although those standards are flexible and scalable to each entity's situation, they provide comprehensive protections. We will continue to evaluate additional standards, including encryption standards, for consideration as adopted e-prescribing standards.

Comment: One commenter recommended more aggressive educational programs for the public concerning privacy and security.

Response: We agree that public education is important. The HHS Office for Civil Rights (OCR) and CMS will continue their ongoing national educational efforts related to HIPAA's privacy and security requirements, respectively. (OCR's Web site is *http://www.hhs.gov/ocr/hipaa*. CMS'' Web site is *http://www.cms.hhs.gov/hipaa/hipaa2*.)

Comment: One commenter suggested that because of the need to ensure data security and privacy, health plans should be allowed to select their own POC vendors for e-prescribing.

Response: All entities involved in e-prescribing are free to select any technology vendor. However, they should make this decision with consideration of their needs and compliance with internal policies and laws, including those for security and privacy.

15. Compliance Date

In the February 4, 2005 proposed rule, we discussed the Secretary proposing January 1, 2006 as the compliance date for the foundation standards (70 FR 6267). We proposed that, beginning January 1, 2006, Part D sponsors, and prescribers and dispensers that conduct e-prescribing transactions for which standards are adopted, would be required to use the standards adopted in this final rule for transactions involving prescriptions or prescription-related information regarding Part D enrolled individuals. Compliance is required whether the entity conducts e-prescribing transactions directly or through an intermediary.

Comment: Many of the commenters were in support of the January 1, 2006 compliance date. Some commenters suggested that the date be moved. Reasons to delay compliance included concerns that some pharmacies, such as those in rural areas, will be unable to comply by this deadline; doing so may create a competitive advantage for those pharmacies (primarily large chains) that could comply; and the deadline will provide insufficient time for PDPs and MA-PDs to communicate the required contractual requirements to downstream providers as well as complete the necessary contracting activities. A few commenters suggested that delaying the compliance date will increase the use of e-prescribing as the extra time will allow physicians time to acquire the necessary technology as well as obtain financial assistance for doing so.

Response: We will require the January 1, 2006, compliance date for all e-prescribing standards adopted in this final rule. We recognize that because e-prescribing is voluntary for pharmacies, not all will be ready to comply with NCPDP SCRIPT by January 1, 2006. As a result, plans may take more time to work with the pharmacies in their network. While e-prescribing will be a requirement for Part D plans, our goal is to work with plans to facilitate widespread compliance and avoid the need to impose program sanctions wherever possible.

Comment: Some commenters supported delaying the compliance date because they believe that the NPI will not be ready in time, or on a sufficient scale to achieve wide-spread use by January 1, 2006. The commenters stated that many entities would not be ready for such accelerated implementation because they were working to meet the HIPAA implementation deadline for the NPI of May 2007 (May 2008 for small health plans).

Response: We recognize that the NPI may not be ready for wide-spread industry use by January 1, 2006. The use of the NPI in the e-prescribing context will be pilot tested. However, entities participating in Part D that want to e-prescribe may use the NPI or other identifiers as specified by CMS, such as the NCPDP pharmacy identifier and the State license number for prescribers. Consequently, the availability of the NPI for use by January 1, 2006 will not affect the compliance date for the foundation standards. However, the NPI will be required for use in e-prescribing standards that are also HIPAA transactions as of the May 2007 HIPAA regulatory compliance date (except for small health plans for which the compliance date is May 2008).

F. Additional E-Prescribing Related Topics

We did not solicit comments on the following issues, however, we did receive several comments regarding long-term care pharmacy, and commercial messaging. We respond to those comments in this section.

1. Long Term Care (LTC) Pharmacy

In the February 4, 2005 proposed rule we did not distinguish the flow of information for LTC pharmacies, home infusion pharmacies, or renal dialysis pharmacies from the pharmacies described in the section E of (Current E-Prescribing Environment) of the proposed rule (70 FR 6260).

Comment: Several commenters noted that e-prescribing is rarely conducted in LTC facilities today. They pointed out that while the foundation standards may be said to have adequate industry experience in the ambulatory setting, this is not the case in the LTC setting. They also indicated that the proposed foundation standards do not support the complexities of the prescribing process for patients in LTC facilities. They explained that, while the standard outpatient prescribing process involves a prescriber and a pharmacy,

prescribing in the LTC setting also involves the facility itself and its nursing staff. The patient's chart may be at the LTC facility, but the prescribing physician may not be, and frequently the facility nursing staff transmits the prescription to the pharmacy, annotates the medical record, and dispenses the drug to the patient.

Some of the commenters requested that the foundation standards not be applied to the LTC setting, unless they are first pilot tested in that environment. They specifically suggested that the 2006 pilot project include LTC facilities and that they test the three-way communication between facility, physician and pharmacy.

Response: We agree that the nursing home industry standard practice is not conducive to early application of e-prescribing standards. The foundation standards that have been adequately tested in the ambulatory setting may not be directly transferable to the LTC setting for several reasons. First, there are generally three parties in LTC prescribing: The provider, the nursing facility, and the LTC Pharmacy. The provider generally writes prescriptions on a 1 to 3 month cycle at the facility, or by phone contact with the nursing station on an as needed basis. There is generally no provision in standard practice for direct provider to pharmacy transmission; in fact, such transmission is considered a potential risk if the administering facility staff is out of the communication loop. Second, the facility has the legal responsibility for processing medication orders as written, before pharmacy transmission. There is also a Federal requirement for concurrent and retroactive Drug Regimen Review (DRR) on all residents, which is the responsibility of the nursing home rather than the provider or pharmacist. Finally, less than 30 percent of nursing homes have computer access at the nursing station. The current practice is for written orders to be faxed to the pharmacist as well as transcribed onto the Plan of Care at the nursing station. These intermediate steps would need to be developed separately in an e-prescribing system.

The systems should be made compatible with a three party approach able to accommodate the LTC recording and DRR requirements, as well as changes due to the Part D benefit. Therefore, we do not require Part D plans to support e-prescribing when a facility, such as a LTC facility, is involved in the prescribing process in addition to the prescriber and the dispenser. Moreover, we exempt from the requirement to use the NCPDP SCRIPT Standard prescription transactions between prescribers and dispensers where a non-prescribing provider is required by law to be a part of the overall transaction process.

We also agree with the commenters who requested that the 2006 pilot project include LTC facilities, and that the three-way prescribing communication between facility, physician, and pharmacy be tested using the standards. We expect to pilot test e-prescribing standards specifically in the LTC environment and welcome participation of LTC facilities.

2. Commercial Messaging

The proposed rule did not address electronic prescribing messaging, which, under the MMA, is aimed at giving providers the appropriate information they need at the POC to make informed decisions for treating Medicare beneficiaries. Section 1860D–4(e)(3)(D) of the Act states that ''e-prescribing standards shall allow for the messaging of information only if it relates to the appropriate prescribing of drugs, including quality assurance measures and systems referred to in subsection (c)(1)(B).''

Comment: Some of the commenters were concerned that standards for appropriate messaging were not included in the proposed rule.

Response: We agree that there needs to be an appropriate balance between providing appropriate information at the POC with messaging that might steer the prescriber to use specific drugs and therapeutics as specified at section 1860D–4(e)(3)(D) of the Act. We also recognize the potential for inappropriate messaging to occur in e-prescribing and share concerns about how the provision of certain information may unduly influence physician prescribing patterns. For example, inappropriate messages include those that would steer the filling of a prescription to a particular mail order pharmacy, and electronic ''detailing'' messages from a manufacturer promoting a particular brand or brand-name drug. Moreover, if a drug manufacturer engages in this practice to promote unapproved uses for a drug, this could be a violation of the Federal Food, Drug, and Cosmetic Act. We will monitor this as an operational issue and will provide guidance to plans at a future date and, if necessary, propose more specific standards for messaging. We intend to pilot test messaging standards when they are available for testing.

3. Diagnosis Codes

Although we did not propose the use of diagnosis codes in electronic prescriptions or solicit comments on this subject, we received a number of comments requesting a requirement to report diagnosis codes on standard electronic prescription transactions.

Comment: Some commenters requested the addition of diagnosis codes to the standards required for electronic prescriptions under the electronic prescription drug program. The commenters indicated that this information is helpful for drug utilization review, decision support, formulary compliance, and therapy choices. One commenter believed that requiring a diagnosis on the prescription supports the MMA requirements and objectives and complies with HIPAA.

Response: We agree that diagnosis codes may provide useful information that could assist in improving patient safety and quality of care, and may be helpful in data collection. The diagnosis data field is an optional field in the NCPDP SCRIPT standard and is not in widespread use. Therefore, we are not requiring it for e-prescribing under Part D at this time and it is not part of this final rule.

G. Other Issues

We received a number of unsolicited comments that included recommendations for CMS, and requests for additional functionality.

Comment: Several commenters suggested that we conduct an analysis of formulary compliance, generic utilization, and their impact on patient care, health outcomes, and overall quality of care, and that health plans not be allowed to use financial incentives to influence physician's prescribing habits.

Comment: Several commenters stated that there was no transaction for the alteration of the status of a requested refill.

Comment: Some commenters suggested that CMS provide guidance to pharmacists on how drug product selection instructions may be separately transmitted in electronic prescriptions, an authentication process for end-to-end prescribing, information on whether a prescription was filled, allergy/tolerance checking and validation of patient and prescription, information for the physician to discuss drug therapy with the patient at POC, diagnosis on the prescription, security measures for internet flow of information, testing statistical interoperability, and drug dosage forms, units of measure, modifiers, and SIG with drug names in standards. One commenter also referenced the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) requirement that

pharmacists review medication orders prior to the medication being dispensed.

Comment: Several commenters offered suggestions for an e-prescribing model such as one built with the patient and prescriber at the center; and a model designed to improve patient care and strengthen the physician-patient relationship, reduce costs, and provide information when it is needed. Also, it was suggested that an e-prescribing model reflect that community pharmacies have significant patient clinical medication information. One commenter suggested that CMS, the NCVHS, the SDOs, and technology vendors collaborate to build an e-prescribing system to support the physician order set for home infusion therapy and be compatible with the X12 837P claim standard.

Comment: Several commenters addressed specific codes for spinal surgery in an ASC setting, reimbursement for specific drugs, and limitations for manipulating a computer keyboard that were out of the scope for the February 4, 2005 proposed rule.

Response: We acknowledge these comments and will take them into consideration in the future as we further develop the electronic prescription drug program. We view e-prescribing as an evolving process and will collaborate with the industry and key stakeholders to enhance and improve the standards for e-prescribing that meet the requirements outlined in the MMA for an electronic prescription drug program.

IV. Provisions of the Final Regulation

For the most part, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

- In § 423.150(c), we are revising the description of the scope to state expressly that this subpart sets forth requirements relating to electronic prescription drug programs for prescribers, dispensers, and Part D sponsors.
- In § 423.159, we are revising the proposed definition for e-prescribing to further define e-prescribing to state that it includes, but is not limited to, two-way transmissions between the point-of-care (POC) and the dispenser. In § 423.159, we are revising our definition of prescription-related information to mean information regarding eligibility for drug benefits, medication history or related health or drug information for Part D eligible individuals.
- In § 423.160(a)(1), we are revising our general rule for Part D sponsors to state that Part D sponsors must establish and maintain an electronic prescription drug program that complies with the applicable standards in paragraph (b) of this section when transmitting, directly or through an intermediary, prescriptions and prescription-related information using electronic media for Part D eligible individuals.
- In § 423.160(a)(2), we are revising our general rule for prescribers and dispensers to state that prescribers and dispensers that transmit directly or through an intermediary, prescriptions and prescription-related information using electronic media must comply with the applicable standards in paragraph (b) of this section when e-prescribing for covered Part D drugs for Part D eligible individuals.
- In response to comments received, we decided that an exemption would be appropriate for computer-generated faxes to comply with the adopted NCPDP SCRIPT Standard. Therefore, in § 423.160(a), we are adding a new paragraph (3)(i) that will permit an exemption for complying with the adopted NCPDP SCRIPT standard for transmitting prescription information between the prescriber's computer and the pharmacy's computers. In paragraph (3)(ii) of this section, we are providing entities with the option of using either HL7 or NCPDP SCRIPT Standard to conduct internal electronic prescription transmittals. In paragraph (3)(iii) of this section, we are including an exemption for complying with the adopted NCPDP SCRIPT Standard when a non-prescribing provider is required by law to be involved in the prescribing process in addition to the prescriber and the dispenser.
- In § 423.160(a), we will add a new paragraph (4) to state that, in accordance with section 1860D–4(e)(5) of the Act, the standards under this section supersede any State law or regulation that is contrary to the standards or restricts the ability to carry out Part D of Title XVIII of the Act and pertains to the electronic transmission of medication history and of information on eligibility, benefits, and prescriptions with respect to covered Part D drugs under Part D of Title XVIII of the Act.

V. Collection of Information Requirements

Section 423.160 of this rule does contain information collection requirements as discussed below:

Section 423.160 Standards for an Electronic Prescribing Program

As the government participates in the development of EDI standards, the question of whether the PRA is implicated has emerged. Part D sponsors offering qualified prescription drug coverage must support and must comply with electronic prescription standards relating to covered Part D drugs, for Part D eligible individuals as would be required under § 423.160. It has been determined that a regulatory requirement mandating the use of a particular EDI standard constitutes an agency-sponsored third-party disclosure as defined under the PRA.

However, the requirement that Part D sponsors support electronic prescription drug programs in accordance with standards set forth in this section, as established by the Secretary, does not require that prescriptions be written or transmitted electronically by prescribers or dispensers. After the promulgation of this first set of final standards, PDPs and MA–PDs will be required to comply with these adopted standards as discussed in section 1860D–4(e)(1) and (2) of the Act. E-prescribing is voluntary for prescribers and dispensers; but, if they electronically transmit prescriptions and other prescription-related information, they are required to comply with the standards.

Testimony presented to the NCVHS indicated that many health plans/PBMs currently have e-prescribing capability either directly or by contracting with another entity. While we agree, we note that such capabilities (such as computer-generated faxes) may not be comparable to the functionality that will be required for electronic prescription drug programs under these regulations. Therefore, we do not believe that conducting an electronic prescription drug program would be an additional burden for those plans.

Since these standards are already in use, we believe the requirement to adopt these standards constitutes a usual and customary business practice and the burden associated with the requirements is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2).

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of

duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in costs and benefits in any 1 year). Our estimate is that this rulemaking has ''economically significant'' benefits as measured by the $100 million standard, and is, therefore, a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis.

Statistics from the Henry J. Kaiser Family Foundation indicate that more than 3.1 billion retail prescriptions totaling $154 billion were written in the United States in 2003, with the average cost for a prescription ranging from $45 to $67. Individuals who are age 65 years and older average 26 prescriptions per year. The Medicare Prescription Drug Benefit final rule (published in the **Federal Register** on January 28, 2005 (70 FR 4193–4585), available online at *http://www.gpoaccess.gov*) estimates that in CY 2006 about 29 million Medicare beneficiaries will receive drug coverage through a Medicare Part D plan. By CY 2010, estimates indicate that about 35 million Medicare beneficiaries will be receiving this drug coverage. (In addition, in CY 2006 approximately 13 million others are Part D eligible, in most cases enrolled in the plans of former employers, and, therefore, will be covered by these rules.) While the Medicare drug benefit participation estimates are subject to uncertainty, changes in the rate or extent of adoption of Part D coverage would not affect the rate of adoption of e-prescribing or the impact of these e-prescribing standards significantly. Virtually all prescribers and pharmacies who serve these beneficiaries now will find that the great majority of their elderly or severely disabled patients are eligible for and enrolled in Part D. To continue to serve any of these patients through Part D plans, and to use e-prescribing, these providers will be subject to these standards.

This impact analysis discusses the overall impact of instituting e-prescribing standards under the Medicare Prescription Drug Program. However, as indicated in the analysis, there are several major factors influencing the adoption of e-prescribing (including existing and future HIPAA rules, these final rules, and forthcoming Stark and anti-kickback rules) and the attribution of effects among them cannot be accomplished with precision.

The overall requirements for supporting e-prescribing and providing incentives were discussed in the Medicare Prescription Drug Benefit proposed and final rules. However, specific standards were not contained in the Medicare Prescription Drug Benefit proposed rule and the impact analysis in that proposed rule did not analyze those requirements. The adoption of standards for the program will enhance the implementation and provide specific direction for providers, dispensers, plans, and vendors.

According to testimony before the NCVHS and in the written comments in response to the Medicare Prescription Drug Benefit proposed rule (69 FR 46632–46863), between 5 and 18 percent of prescribers are conducting e-prescribing. However, some studies have indicated increased prescriber interest and the likelihood of greater adoption of e-prescribing. We anticipate that the use of the standards in this final rule and the fact that these standards will be available at the time of the January 2006 implementation of the Medicare Prescription Drug Program, will accelerate adoption of e-prescribing due to heightened awareness of the benefits, the variety of devices and connections available for prescribers, and the fact that the standards are already successfully being used. While there are no detailed models predicting specific rates of adoption for this technology, based on prevailing expert opinion, we think it likely that the proportion of prescribers using e-prescribing will increase by about 10 percent annually over the next 5 years. The 10 percent annual growth in prescriber participation is a rough estimate, based on our expectations of—

- Publicity surrounding the Medicare Prescription Drug Program;
- More publicity about the benefits of e-prescribing and the experience of prescribers who are participating;
- Increased emphasis on health information technology in general;
- Potential cost savings to providers using e-prescribing; and
- The availability of incentives for participation.

We believe that, as prescribers gain experience with e-prescribing, they will recognize the benefits and share those experiences with colleagues. In the February 4, 2005 proposed rule, we invited public comment on our expectations for prescriber participation. We received the following comments in response to our request:

Comment: Most of the commenters believe that CMS has appropriately estimated or even underestimated the annual rate of participation in electronic prescribing. An e-health management firm stated that ''the CMS estimate of 10 percent growth in electronic prescribing per year is reasonable, but only with proper incentives or sponsorships.'' One of the commenters that is a leading seller of e-prescribing systems stated that ''in order to achieve greater than 10 percent annual growth, cost savings from other stakeholders, particularly payers, must be shared with physicians.''

A PBM commented that the CMS estimate of prescriber participation is too conservative based on two studies' results. A Pri-Med Research Group study showed 1 in 5 physicians report using electronic prescribing technology now and another 42 percent are planning to adopt it in 2005. A recent Medical Economics survey indicated 1 in 4 physicians plan to purchase an EHR system soon, at least 70 percent of which already include e-prescribing capability.

However, some commenters stated that expectations for provider participation must be seen in the context of increasing practice expenses. These commenters pointed out that CMS actuaries predict five percent reductions in Medicare physician reimbursement each year between 2006–2011. Also, physicians are under pressure to purchase EHR technology rather than e-prescribing stand-alone technology. In many cases EHR software does not yet contain e-prescribing modules, and physicians may be reluctant to invest in incompatible software. Many of the commenters stated that financial incentives and support for physicians and other prescribers who utilize e-prescribing technology should be readily available.

Response: Based on these comments, we see no need to change our estimate of 10 percent annual growth in prescriber participation over the next 5 years. The interoperability between EHR and e-prescribing is particularly important, as mentioned above. We intend to monitor the progress of any future certification process of EHRs and recognize the enhanced value of e-prescribing with the availability of advanced decision support through an EHR. We plan to create incentives for adoption of full EHR through our forthcoming rules on exceptions to the Stark law and safe harbors to the anti-kickback statute.

B. Discussion of E-Prescribing Benefits

According to the Center for Information Technology Leadership (CITL), more than 8.8 million adverse drug events (ADEs) occur each year in ambulatory care. (CITL, The Value of Computerized Order Entry in Ambulatory Settings, 2003. A summary is available at *http://www.citl.org/research/CITL_ACPOE_Summary.pdf*.) E-prescribing helps to deliver relevant patient information at the time of prescribing. The CITL estimates that nationwide adoption of e-prescribing will eliminate nearly 2.1 million ADEs per year in the U.S. This will prevent nearly 1.3 million provider visits, more than 190,000 hospitalizations, and more than 136,000 life-threatening ADEs. These improvements will result in improved care and safety for health plans' members.

There is also evidence suggesting that the use of specific drugs may reduce adverse health events and utilization of other health care services for certain groups of patients. E-prescribing will promote efficient and effective use of drugs by ensuring that prescribers have up-to-date information regarding advances in drug therapies. For example, a recent study found that the use of statins in cholesterol-lowering drug therapy reduced the incidence of coronary disease-related deaths by 24 percent in elderly men and women (ages 70 to 82) with a history of, or risk factors for, vascular disease, and also reduced the incidence of non-fatal heart attacks and fatal or non-fatal strokes in these patients (''Pravastatin in Elderly Individuals at Risk of Vascular Disease (PROSPER): A Randomized Controlled Trial,'' Lancet 2002, 360:9346, 1623–1630).

In addition to the anticipated reductions in adverse health events associated with anticipated improvements in prescription drug compliance, we believe that many elements of the Medicare prescription drug benefit, including quality assurance, better information on drug costs (for example, through generic substitution), and medication therapy management will be enhanced by e-prescribing. All of these are designed to improve medication use and reduce the risk of adverse events, including adverse drug interactions. We believe that these improvements, enabled by e-prescribing programs, will occur through enhanced beneficiary education, health literacy and compliance programs; improved prescription drug-related quality and disease management efforts; and ongoing improvements in the information systems that are used to detect various kinds of prescribing errors, including duplicate prescriptions, drug-drug interactions, incorrect dosage calculations, and problems relating to coordination between pharmacies and health providers. We also believe that additional reductions in errors and additional improvements in prescription choices based on the latest available evidence will occur over time as the electronic prescription program provisions of the MMA are implemented. (To Err is Human: Building a Safer Health System, Institute of Medicine of the National Academies, 1999, pp. 191–193, *http://www.iom.edu* or *http://www.nap.edu*).

At this time, we cannot predict how fast (or even if) all of these savings will occur, nor their precise magnitude, as they are dependent on the rate at which we are able to adopt final standards for various aspects/functions of e-prescribing and EHRs, the adoption rate of e-prescribing by prescribers and pharmacies (depending in turn on if savings are realized), the effectiveness and existence of various incentives provided by private vendors/health plans, the quality of the systems implemented for e-prescribing, and the behavioral responses of prescribers, health care practitioners, dispensers, insurers (who help manage treatments), and patients. However, as indicated by the CITL report estimate, the potential is clearly substantial. We received a few comments on our analysis of benefits for e-prescribing which is largely unchanged from the proposed rule.

Comment: One commenter expressed skepticism regarding CITL's and IOM's findings that electronic prescribing can reduce morbidity and mortality rates through reductions in common errors as described.

Response: We appreciate that the predictions as to what can be achieved are necessarily speculative to some degree, and that similar kinds of predictions sometimes are unduly optimistic. However, these data are derived from reputable sources and there is general agreement in the industry about the direction and potential magnitude of these benefits.

C. HIPAA Standards Impact

The ASC X12N 270/271 Transaction and the NCPDP Telecommunication Standard adopted in this final rule, for e-prescribing transactions, are already adopted standards for HIPAA. Thus, any costs associated with the adoption of these transaction standards are already encompassed in the baseline. (The impact of implementing these standards was analyzed and adopted in the HIPAA final rule and available on the web through *http://www.gpoaccess.gov*).

We note, however, that there is one very important difference between those HIPAA regulations and this final rule. In the HIPAA regulations, we knew that some of the electronic claims standards we were requiring were incompatible with many of those already in use for electronic billing of Medicare claims. We know that some prescribers and other entities are already using the standards we are adopting in this final rule. Thus, while the HIPAA Final Rule and this final rule share common goals and methods, they have different implementation consequences.

This final rule involves both mandatory and voluntary elements, but even the mandatory elements are enabling. For example, the statute might have encouraged e-prescribing by making it a required condition of participation in Medicare, through positive financial incentives, by reducing barriers to adoption, by increasing the value of e-prescribing systems, or through other means. The primary method chosen by the Congress was to increase the value of e-prescribing systems by mandating uniform standards for e-prescribing. Uniform standards reduce barriers to adoption by reducing uncertainty in the marketplace regarding which standards will be the industry standards of the future. These incentives are created without imposing substantial costs. For potential new e-prescribers, whose choice to adopt e-prescribing is voluntary, these standards provide the advantages of uniformity and reduced uncertainty, and, hence, reduce costs or increase benefits of adoption. For those existing entities that currently engage in e-prescribing transactions whose systems are currently incompatible with these standards, transitioning to the foundation standards will be mandatory to continue e-prescribing (with the option of returning to paper or, for internal use, the option of continuing to use HL7 provided that communication with external parties meets the adopted standards and that there is compliance with the HIPAA standards) and will come at some cost, but will also increase value of these systems in the long run as it will enable these entities to communicate with all other e-prescribers. Only for Part D sponsors is use of these standards mandatory, and even then, only to receive or reply to e-prescribing transactions initiated by other entities. In the proposed rule, we requested comments and data on the impact of the proposed standards on prescribers, health plans, and pharmacies based upon our estimates.

We received the following comments on the estimates used to determine the regulatory impact of the proposed rule and input on the data and issues presented in this impact analysis.

Comment: One commenter urged us to clarify the policy for those PDPs that have pharmacies which are not in compliance with e-prescribing standards by the deadline. The suggestion was made to allow a grace period and explain any repercussions.

Response: Our regulations do not require pharmacies to implement e-prescribing. Health plans must have that capability, but use of e-prescribing by both pharmacies and physicians is elective. Accordingly, a grace period is unnecessary.

Comment: One commenter suggested that CMS deal with policy considerations around how e-prescribing technology and standards will relate to Medicare Part B drugs, as well as the Competitive Acquisition Program (CAP).

Response: The MMA only authorized us to impose an e-prescribing requirement on MA plans and free-standing prescription drug plans that pay for Part D drugs. This in no way precludes use of e-prescribing in other Medicare contexts, and likely encourages it, but does not force it. Since there are no separate e-prescribing requirements under Part B or the CAP program, there is no potential inconsistency problem.

D. Impact on Health Plans/PBMs

The Medicare Prescription Drug Benefit final rule (70 FR 4194) estimated that 100 PDP sponsors and 350 MA organizations would submit applications on an annual basis for participation in the Medicare Prescription Drug Program. In fact, a substantially larger number of organizations applied and we approved contracts with 73 PDP sponsors and 416 MA–PD organizations on September 29, 2005.

Testimony presented to the NCVHS (available on the Web at *http://www.ncvhs.hhs.gov*) indicated that, because most health plans/PBMs currently have e-prescribing capability, any additional costs associated with hardware/software connectivity will be minimal. Since the great majority of health plans contract with PBMs for pharmacy benefit administration, we do not consider the fees associated with these contracts to be an additional cost for plans conducting electronic prescription drug programs, although connectivity costs could increase based on volume.

Although we believe that costs incurred by health plans will be minimal, even in those few cases where plans do not currently support e-prescribing directly or through PBM contracts, it is possible that some plans will experience consequential costs that we have not foreseen. In the February 4, 2005 proposed rule, we requested comments on possible costs to plans, and on steps we could take to ameliorate any unnecessary costs. We also requested comment on our expectation, discussed below, that plans will experience substantial financial benefits from e-prescribing and that the new standards will be cost-beneficial to plans. We received the following comments in response to our request:

Comment: Most of the commenters on the subject of financial impact agreed that health plans/PBMs stand to gain the most from savings generated by e-prescribing, but most of these commenters believe HHS has underestimated the cost of implementation and management, including the cost to health plans/PBMs. While most health plans/PBMs have e-prescribing capability, start-up costs such as downloading formularies and medication histories, developing and standardizing acceptable medical terminology, as well as ongoing transaction costs, must not be overlooked.

The commenters noted that PBMs may not have the incentive to continue paying for implementation and transaction fees and that other parties in the e-prescribing chain, in the past, have not been paying these fees. The commenters stated that HHS must recognize that costs, or the lack of knowledge of true costs, has been the primary barrier to implementation up to this point. Vendors' costs regarding the HIPAA standards upgrade process were not minimal and many of the commenters do not anticipate e-prescribing updating/systems creation to be negligible.

The commenters stated that the cost for a health plan to have e-prescribing capability, that is, the start-up operating cost, was estimated to be $250,000 by one e-health management firm. This is the cost of connecting to RxHub, the ''only viable option for broad-scale connectivity that enables eligibility-based formulary services and Rx claims history at POC.''

One commenter concurred with HHS that the impact on health plans/PBMs would be a minimal financial burden, but noted that health plans/PBMs would have to pay for new transaction costs (for example, transactions between prescriber and PBM). The same commenter expressed skepticism that plans would incur a ''substantial financial benefit from just e-prescribing alone.'' The commenters mentioned savings from formulary and benefits compliance, improved patient outcomes and fewer adverse drug events/hospitalizations, better utilization management and increased use of generics. Additional benefits may include tax incentives to engage in e-prescribing, and/or improvements from implementation of more universal electronic health records systems (EHRs systems).

Full sponsorship of a prescriber by a health plan was estimated to cost at least $1,500 per physician by several commenters. The cost would vary based on benefit design, market share, covered lives and local market competition. Health plans should see a complete return on investment within 12–18 months after full implementation, according to one commenter. A few commenters did not agree that costs to health plans would be minimal, and stated that systems upgrade requirements may be significant. One commenter stated that the costs associated with adoption are not merely the cost of provider incentives, but also operating costs. There are human, technical and project management resource costs as well. The same commenter recommended implementing a sliding scale for PDP compliance with foundation standards.

An e-health management firm estimated health plan savings from e-prescribing to be 1 to 4 percent over traditional prescribing through formulary and generic drug use improvements and 1 to 3 percent or more through improvements in mail order use.

A commenter discussed the Council for Affordable Quality Healthcare (CAQH) e-prescribing pilot program that began in 2003 and in which 120 area physicians participated. One participating health plan experienced a 35 percent net savings (average savings of $29.91 per prescription) in drug costs when a formulary warning was given. Savings for other health plans with fewer non-formulary warnings were lower.

Response: We did not intend to suggest that there were no costs to health plans associated with the implementation of e-prescribing. We agree with commenters that there will be a variety of start-up and implementation costs to plans. Some types of costs will be one time (for example, downloading formulary and tiering categories for each drug) subject only to updates, and others will be

recurring and grow with use. Our belief, and one that most of these commenters implicitly or explicitly accept, is that over time plans may save substantially more than the costs they incur. Moreover, e-prescribing is just one small element in the entire panoply of investments plans are making to participate in the new prescription drug benefit. For example, formulary development and the downloading of formulary and tiering information into several computer systems is necessary for purposes of payment, regardless of whether the prescriptions are made electronically.

We did not accept the comment requesting a sliding scale of adoption for health plans. We are not persuaded that plans face substantial technical or financial barriers to establishing and maintaining the ability to support e-prescribing as would warrant such a delay. Moreover, the larger than expected number of organizations seeking and obtaining MA and PDP contracts indicates that health plans themselves do not see this as a significant impediment.

We agree with commenters that it is likely to cost at least as much as, and perhaps much more than, we originally estimated for prescribers to adopt the new technology. Nonetheless, we continue to expect many plans to provide incentives to prescribers to offset at least some of the prescribers' initial cost of installing the hardware and software, thereby encouraging the adoption of e-prescribing.

We expect that incentives to prescribers from Part D sponsors and other health care entities will represent a transfer of costs from prescribers to those entities that offer incentives. These transfers of electronic prescribing items and services should neither increase nor decrease the overall impact of implementing an electronic prescription drug program.

We note that these incentives must not violate either anti-kickback prohibitions or the physician self-referral prohibitions. Section 1860D–4(e)(6) of the Act requires the Secretary to publish regulations that provide for an exception to the Federal self-referral prohibition in section 1877 of the Act and a safe harbor under the Federal anti-kickback statute (section 1128B(b) of the Act) for certain arrangements in which a physician receives necessary non-monetary remuneration that is used solely to receive and transmit electronic prescription drug information.

Both the physician self-referral exception and the anti-kickback safe harbor would protect certain non-monetary remuneration in the form of hardware, software, or information technology and training services necessary and used solely to receive and transmit electronic prescription drug information. As discussed earlier in this preamble, we published two proposed rules that would implement these provisions and intend to publish final rules as soon as possible. They will both apply to hospitals, group practices, and PDP sponsors and MA organizations.

Health plans have a substantial incentive to subsidize the cost of physicians' adoption of e-prescribing because the plans would share potential savings in health care spending through reductions in adverse events and improved compliance. Thus, it is likely that the net effect on plans would be positive rather than negative. Moreover, there is no reason to expect health plans to incur costs without the expectation of a positive return. However, we have no basis at this time for estimating the precise timing or magnitude of either gross or net savings.

E. E-Prescribing Incentives

In the proposed rule, we stated that health plans that have offered incentives to prescribers have estimated the hardware and software costs for implementing an e-prescribing system for a provider to be approximately $1,500 per prescriber. At this time, a number of health plans are developing incentive packages for prescribers to initiate e-prescribing. We received the following comments on the impact that this regulation will have on both prescribers and the likely costs of those incentives.

Comments: In addition to the commenters previously mentioned, one health plan stated that it had spent $3 million to equip 700 physicians with hardware and installation, software, and training in their e-prescribing initiative (an average of almost $4,300 per physician). To boost participation, the health plan is now piloting a program to grant honoraria (between $600 and $2,000) to physicians who write electronic prescriptions. The commenter believes that without the financial, hardware/software, and support incentives, the average physicians' practice would incur costs up to $2,500 per physician to adopt e-prescribing.

Another commenter cited a Massachusetts collaborative project that is partially funding physician adoption of e-prescribing and has reported only about 13 percent of targeted physicians (2,700 of 21,000) have adopted the technology. Wellpoint also offered e-prescribing and physician incentives. Among physicians participating in this initiative, only 12 percent adopted an e-prescribing system over an offer for a desktop-based practice management system.

Response: These commenters illustrate both the difficulty of changing prescriber behavior and the potentially positive effects of relatively inexpensive incentives. It is clear that training and support, not just equipment and software, are necessary to foster e-prescribing.

F. Impact on Prescribers

Current surveys estimate that between 5 and 18 percent of physicians and other clinicians are using e-prescribing. According to the Agency for Healthcare Research and Quality, MEPS Highlights #11, more than 3 billion prescriptions are written annually. The ''2003 CMS Statistics'' publication reports the number of physicians in active practice at 888,061. We assume that all of these physicians are considered prescribers. However, the number of practicing physicians is not a direct measure of the volume or scope of potential e-prescribing adoption. According to the 2002 Economic Census, Health Care and Social Assistance industry publication (*http://www.census.gov*), there are about 203,000 physician office establishments. This smaller number reflects the common use of group practices and other arrangements that allow physicians to share caseload, facilities, and costs. For these and other prescribers, the likely focus of a decision to adopt e-prescribing is the office, rather than the individual physician.

Although physicians are encouraged to adopt e-prescribing technology, whether physicians prescribe electronically under the MMA is, nevertheless, voluntary. As previously discussed in this analysis, we expect e-prescribing to reduce prescriber costs and produce net economic benefits to prescribers, but the magnitude and timing of savings first will have to be demonstrated to many prescribers to induce them to make the ''up front'' investment in new systems. Finally, an additional incentive for prescribers to e-prescribe is the improved patient care that e-prescribing brings. Because we cannot determine the effect of these factors on prescribers at this time, we do not know how many prescribers will move to e-prescribing or when they will do so.

As discussed earlier in the preamble of this final rule, once a prescriber decides to conduct e-prescribing for Part D drugs, for Part D eligible beneficiaries, the prescriber will be required to comply with the standards being adopted in this regulation. However, we

have no reason to believe that the use of these particular standards will increase costs for new adopters, compared to what costs otherwise would have been, even for those (and we think they are few) who are currently using systems that may be in some respects incompatible with these standards. The February 4, 2005 proposed rule stated that we expected vendors to upgrade those systems at no or nominal cost as part of their normal version updating process.

Comment: One commenter disputed this claim because, according to the commenter, this was not the case with HIPAA upgrades.

Response: We are not sure what specific experience the commenter is referencing in relation to HIPAA upgrades. More importantly, if existing systems are not upgraded to meet adopted standards at low or nominal expense to current users, then those users will switch to newer systems that do not require costly investments to meet those standards. For example, as we stated in the February 4, 2005 proposed rule, a system that uses uniform standards will enable a prescriber to do business with multiple entities, and reduce costs compared to the alternative of having to deal with multiple incompatible systems.

Comment: Several commenters stated that administrative professionals in medical settings, rather than prescribers themselves, may more readily adopt e-prescribing, particularly as a ''stand-alone'' tool.

Response: We agree that support staff will often facilitate the adoption of e-prescribing, ease the transition, and manage the system.

Comment: All of the commenters suggested estimated start-up costs for an individual physician to be at least $1,500 and perhaps exceeding $2,000. This estimate would vary based on benefit design, market share, covered lives and local market competition.

Response: As previously discussed, the magnitude and timing of potential savings will first have to be demonstrated to many prescribers to induce them to make the ''up front investment'' in e-prescribing technology. The purpose of this final rule is to adopt standards for electronic drug prescription programs for covered Part D drugs for Part D eligible individuals so that physicians, health plans/PBMs, pharmacies and other stakeholders can plan for widespread adoption of this useful technology in a coordinated and uniform way. As to the cost of system implementation, the comments and information we received varied widely, though generally the estimated costs cited in these comments were not far above our initial estimates.

For average e-prescribing software implementation, according to a 2003 CITL report, ''The Value of Computerized Provider Order Entry'', a basic e-prescribing system costs $1248 plus $1690 for annual support, maintenance, infrastructure and licensing costs. The total first year cost averaged approximately $3000.

The Journal of Healthcare Information Management has published that even though vendors nearly always provide free e-prescribing devices to physicians, physicians reported paying user-based licensing fees ranging from $80 to $400 per month. Physicians also reported that they had to invest in new or updated hardware, such as computer servers and networking infrastructure, to operate the e-prescribing system (the amount varied significantly by product).

G. Discussion of E-Prescribing Barriers

One of the barriers to early adoption of e-prescribing by prescribers is the cost of buying and installing a system. Included in the overall costs of buying and installing systems are several factors including—

- Changing the business practices of providers' offices;
- Changing record systems from paper to electronic; and
- Training staff.

Since these costs may be defrayed by the incentives that are being offered, or that may be offered, to prescribers, we expect a steady increase in the number of electronic prescribers. We do not know all of the various incentives being offered, but are aware that some health plans have offered hardware and software for e-prescribing and reimbursement for the first year's e-prescribing subscription fees (as indicated above, those arrangements must not violate Federal and State laws prohibiting kickbacks and physician self-referrals). We invited public comments on the nature and extent of incentives being offered to encourage prescribers to conduct e-prescribing or likely to be offered subsequent to the publishing of regulations to create an exception to the Stark law and an anti-kickback safe harbor for e-prescribing. We also anticipate that increased communication regarding the safety improvements and potential cost savings experienced with e-prescribing will encourage prescriber acceptance.

As we indicated in the proposed rule, there is anecdotal evidence of direct economic benefits that accrue to prescribers that implement e-prescribing, in addition to the previously discussed health benefits to patients. The following examples of these benefits have been reported:

- A 53 percent reduction in calls from, and a 62 percent reduction in calls to, the pharmacy.
- Time savings of 1 hour per nurse and 30 minutes per file clerk per day by streamlining medication management processes.
- A large practice in Lexington, Kentucky estimates that e-prescribing saves the group $48,000 a year in decreased time spent handling prescription renewal requests.
- Before implementation of e-prescribing, a large practice in Kokomo, Indiana with 20 providers and 134,000 annual patient office visits was receiving 370 daily phone calls, 206 of which were related to prescriptions. Of the 206 prescription-related calls, 97 were prescription renewal requests. The remainder consisted of clarification calls from pharmacists or requests for new prescriptions. Staff time to process these calls included 28 hours per day of nurse time and 4 hours per day of physician time. Chart pulls were required in order to process half of the renewal requests. Implementation of an e-prescribing system produced dramatic time savings that permitted reallocation of nursing and chart room staff.
- Potential reductions in malpractice insurance because of improvements in the quality of patient care resulting from better tracking of patients' drug regimen and a reduction of ADEs, which may occur with e-prescribing.

These examples come from large practices, but we expect that most if not all of them will apply equally well to smaller practices. We requested public comments and additional information on actual and potential savings, particularly in solo and small group practices. We received the following comments and information regarding this issue:

Comment: A commenter stated that savings in the e-prescribing pilot conducted by the CAQH were not quantifiable because of the small size of the pilot (127,000 e-prescriptions were generated). However, prescribers did experience reduced call volume and time savings from easier access to medication lists. According to other commenters, McKesson Corporation has achieved similar time savings with partners in Illinois and Iowa. For example, improved clinical information access eliminated the need for chart pulls; 100 percent compliance with prescription requirements leading to reduced call volume regarding formulary questions; and 83 percent improvement in efficiency related to medication refills. While the results

have not been quantified in dollar savings, the initiative has generated a 26 percent increase in nursing time with patients. The Tufts Health Plan Pilot program and Newton-Wellesley Case Study also corroborated physician practice time savings, of approximately 2 hours per day.

Response: These commenters provide additional information confirming that e-prescribing will provide significant savings. Some of the reported savings, such as daily savings measured in hours, would, if replicated, appear to be economically highly significant.

Despite these supportive comments, we still do not have sufficient information on either the costs or benefits for a given type or size of provider to conduct a cost-benefit analysis for that provider type or size.

H. Impact on Pharmacies and Other Dispensers

Testimony from pharmacists and professional pharmacy organizations provided to the NCVHS (available on the Web at *http://www.ncvhs.hhs.gov*) reported the following benefits of e-prescribing for pharmacies:

- Reduced time-consuming phone calls to physicians.
- Improved accuracy and less time for refill authorizations.
- Additional time available for patient contact and services.
- Improved prescription communication between prescriber and dispenser (through, among other things, reduction in illegible handwritten paper prescriptions).
- Improved turnaround time for refill authorizations.

We do not expect to see a material change in the volume of prescriptions written for pharmacies to fill because of e-prescribing. While we expect to see the efficiencies (discussed at the beginning of this section) at pharmacies with some possible reductions in administrative staff time, we do not expect to see a significant economic effect from the implementation of e-prescribing in the Medicare Part D program. We note that pharmacies could benefit from the incentives permissible under both the physician self-referral exception and the anti-kickback safe harbor. These exceptions would protect certain non-monetary remuneration in the form of hardware, software, or information technology and training services necessary and used solely to receive and transmit electronic prescription drug information.

The industry has provided information indicating that 75 percent of the approximately 57,000 pharmacies in the U.S. already have e-prescribing capability which suggests that pharmacies already find this a beneficial investment (75 percent figure from testimony of Kevin Hutchinson of SureScripts before the NCVHS Subcommittee on Standards and Security, May 25, 2004; estimate of number of pharmacies from National Community Pharmacists' Association, press release of June 29, 2004). In this respect, we note that the great majority of pharmacies are already highly networked for other reasons, and, therefore, assume that the marginal costs of e-prescribing are likely to be small. For example, as indicated earlier in this preamble, we believe that over 95 percent of pharmacy systems are already compatible with the NCPDP retail pharmacy drug claim standard. Since adoption is voluntary and only undertaken where it is likely to be profitable, we expect any net effects to be positive.

In the February 4, 2005 proposed rule, we did, however, request additional information on pharmacy impacts. We received the following comments and information on pharmacy impacts:

Comment: According to one commenter, e-prescribing will likely save time and money for pharmacies by automating the pre-authorization process between prescribers, third party payers and pharmacies. The commenter stated that it also will reduce calls to physicians and save time for refills. However, the commenter indicated that there also will be costs associated with implementation. There are training expenses associated with supporting inbound e-prescriptions. One commenter who agreed that the net effect on pharmacies will be positive noted that there may actually be a slight negative effect early in the process of implementation due to the learning curve. The number of prescriptions that actually reach pharmacies will likely increase, in part because patients other than Medicare beneficiaries will benefit from e-prescribing. The increase in volume will create additional burden on staff time and the number of prescriptions that are not picked up will likely increase.

According to one commenter (and inconsistent with the information we presented in the proposed rule), most pharmacies, especially small pharmacies, are not networked to exchange data with prescribers electronically. The number of pharmacies actually receiving computer-to-computer prescription transactions is much smaller than CMS estimates. For example, according to this commenter, of 200,000 prescriptions that prescribers using its system transmit electronically each month, 63 percent must be re-formatted for transmittal to a pharmacy's fax machine. CMS should not underestimate the costs, logistics and training required to migrate to true e-prescribing.

The National Association of Chain Drug Stores (NACDS) stated that there should be incentives for pharmacy adoption of e-prescribing in addition to incentives for prescribers because pharmacies will need to invest in new technology and training as well as pay e-prescribing transaction fees. Another expert organization estimated e-prescribing transaction fees to be between $0.215 and $0.35. Therefore, the average community pharmacy may incur costs of between $4,000 and $5,000 per year in transaction fees.

Response: While there are costs associated with e-prescribing technology adoption, it is clear that most pharmacies will benefit. The Tufts Health Plan Pilot Program found that pharmacists were very satisfied with e-prescribing (as defined by their Pilot Program but not ''true'' e-prescribing as defined under this final rule) and saved almost one hour per day using relatively inefficient fax e-prescribing technology. While the standards being adopted do not accommodate the use of facsimile technology, which involves transmission of graphic image copies rather than fielded data, this relatively primitive modality illustrates potential cost-effectiveness. Broader use of ''true'' e-prescribing would yield even better results.

I. Impact on Patients

E-prescribing has the potential for improving beneficiary health outcomes. E-prescribing systems enable appropriate drug compliance management and improved medication use, and provide information to prevent adverse drug events. E-prescribing systems can improve patient safety by detecting various kinds of prescribing errors, including duplicate prescriptions; drug-drug, drug-allergy and drug-disease interactions; incorrect dosage strengths prescribed; mis-prescribing, and problems relating to coordination between health care providers and pharmacies (for example, early and late refills). These types of reductions in errors and improvements in regimens will occur increasingly as more and more providers use the e-prescribing systems for the Medicare Prescription Drug Benefit (To Err is Human: Building a Safer Health System, Institute of Medicine of the National Academies, 1999, pp. 191–193, *http://www.oim.eduhttp://www.ioim.edu* or

http://www.nap.edu). E-prescribing can also inform physicians on appropriate formulary choices, which can save money for the health plans, patients, and health care system.

Nothing in the e-prescribing system creates direct costs for patients. We believe that reductions in patient mortality and morbidity will be a substantial benefit resulting from the adoption of e-prescribing, although we are unable at this time to provide quantitative estimates. The Department of Defense has an e-prescribing system, Pharmacy Data Transaction Service (PDTS), which uses a centralized repository of prescription and medication information to detect drug interactions (more than 117,000 were found over the last three years). However, this system is integrated with a full patient record.

Comment: All of the commenters on this issue agreed that patients will benefit from e-prescribing. Positive effects include ameliorating care fragmentation; encouraging prescribers to prescribe less expensive drugs so that patients halve their medications less frequently in order to save money; improving accessibility of clinical and personal health history at the POC; eliminating duplicate and negative interaction prescriptions; improving patient compliance by making the process of filling prescriptions easier; and prescriber notification of prescriptions being filled.

Response: We continue to agree that e-prescribing will have a substantial net positive impact on patient care, including improved outcomes, reductions in errors, and the ability for providers to monitor compliance. The previously cited CTIL report estimated in 2003 that e-prescribing will eliminate nearly 2.1 million adverse drug events annually in the U.S. and also projected $2.7 billion in annual savings with widespread adoption.

Although we did not receive negative comments, we do point out that there are two potentially negative effects of e-prescribing, both of which have been raised at NCVHS meetings. First, like the creation of any computer-based system that includes personal information, e-prescribing creates new privacy risks. The problem is not that private information is not already available to authorized users, but that despite authentication procedures and other safeguards any electronic data base available to authorized users is potentially vulnerable to penetration by unauthorized users who, if they succeed, can potentially gain access to the records of many persons. Relatedly, increases in the number of authorized users increase the potential for unscrupulous users to sell or otherwise reveal private information. Second, there is the possibility that an e-prescribing system, like any system, can be programmed in ways that result in errors. We think that both potential problems are likely to be infrequent, small in scope, and unlikely to create significant costs.

J. Impact on Others

We see the growth of e-prescribing as business potential for healthcare information technology vendors. Any costs associated with e-prescribing and potential business opportunities could be allocated toward new product development and would likely be recouped. We have no estimates for these types of costs and did not receive public comment from healthcare information technology vendors and others on the impact of e-prescribing.

E-prescribing is in widespread use among some segments of the industry, especially health plans and PBMs and some pharmacies; however, we have not determined the impact and extent of experience for other entities such as pharmaceutical and medical device manufacturers, public health organizations, research and academic institutions, and professional lay organizations. We invited public comment on the impact of e-prescribing for these entities.

The Health Information Network Weekly Update (Volume VI, No. 49, November 15, 2004) stated that e-prescribing is at the top of the list of e-health applications that will see the greatest growth. Thirty-nine percent of participants predict e-prescribing will be the most widely embraced e-health application.

We received the following comments on the impact of e-prescribing on the entities discussed above:

Comment: Commenters stated that the research community and public health professionals could also benefit from new, de-identified data that may become available.

Response: We agree with the commenters. We are already undertaking initiatives to increase reporting on outcomes of new medical devices and drugs that have been approved conditionally or with circumscribed applicability through our coverage decisions. We expect that the records generated in implementing the new Part D drug benefit will provide substantially expanded data bases that, properly analyzed without violating individual patient privacy, will help establish the absolute or comparative effectiveness of pharmaceutical therapies in curing or alleviating diseases that affect Medicare beneficiaries, and help establish the incidence of adverse or positive side effects.

K. Impact on Small Businesses

The RFA requires agencies to analyze options for regulatory relief for small entities when final rules may create a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses whose revenues fall below specified thresholds, nonprofit organizations of any size, and small governmental jurisdictions (population under 50,000). Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $6 million a year. For purposes of the RFA, approximately 95 percent of pharmacy firms, which account for about 51 percent of pharmacy establishments, are small businesses based upon 1997 Census data. There are approximately 57,000 retail pharmacy establishments based upon the ''2004 National Community Pharmacists Association Pfizer Digest.'' We estimate that about 29,000 pharmacy establishments are considered small businesses, and, therefore, small entities. Almost all physicians in private practice (or the practices of which they are members) are small businesses, and, therefore, small entities because their annual revenues do not meet the Small Business Administration's threshold for ''small'' physician practices. Individuals and States are not included in the definition of a small entity, and this final rule has no effect on small governmental jurisdictions.

We believe that this final rule will have an impact on a substantial number of small entities due to the large proportion of pharmacies and providers that are small businesses. We recognize that there will be a distribution of costs and benefits with proportionately higher costs incurred by smaller entities than by larger entities, primarily as a result of economies of scale. However, as indicated earlier in this section, as many as 75 percent of pharmacies already are conducting e-prescribing and 5 to 18 percent of prescribers are using this technology. Clearly, these rates of voluntary adoption indicate that it provides net economic benefits. Furthermore, this final rule recognizes that e-prescribing remains voluntary for entities that are not Part D sponsors. That is, prescribers and dispensers are only required to comply with the standards adopted under section 1860D–4(e)(1) of the Act if they

electronically transmit prescriptions or prescription-related information, with respect to covered Part D drugs for beneficiaries eligible for Part D. Small entity prescribers, therefore, are able to determine whether they incur costs of any kind. Finally, we believe that the effects of adoption are economically beneficial to affected entities.

We note that this conclusion differs from the impact analysis of the HIPAA final rule which was determined to have a significant impact. The basis for that determination was that a significant percentage of providers were already conducting the relevant transactions electronically in nonstandard form. For example, over 80 percent of Medicare claims submitted by physicians were transmitted electronically. Those providers would have been required to switch to the HIPAA standards, which were not in widespread use, creating a burden on a large percentage of affected entities. By contrast, only 5 to 18 percent of prescriptions are conducted electronically, and the small number of providers who are doing so are very likely already using the standards that we are finalizing in this final rule.

Accordingly, we conclude that this final rule will not have a significant economic impact upon a substantial number of small entities, and that neither an Initial nor Final Regulatory Flexibility Analysis is required. In the February 4, 2005 proposed rule, we welcomed comments on this conclusion and additional information on the effects this rule would have on small businesses. We received the following comments and information regarding effects of this regulation on small businesses:

Comment: A number of commenters stated that very small businesses (such as some pharmacy chains, independent pharmacies, and physician offices) will incur disproportionately higher implementation costs than larger entities due to economies of scale. Furthermore, currently, most small pharmacies and physician offices are not currently networked to exchange prescription data electronically (many are only fax-equipped). The cost of implementing and maintaining electronic prescribing technology will be more difficult for small business entities to absorb. Implementation is not truly voluntary in the sense that lack of participation likely means going out of business. Small rural pharmacies, especially, may be less likely to contract with PDPs, thus, creating access issues.

On the other hand, one commenter stated most small physician offices will not be impacted because electronic prescribing is still voluntary. For those that choose to implement electronic prescribing, their practice will experience a neutral or small impact. Another commenter believes CMS' estimates of prescriber participation are too conservative and cited a Pri-Med Research Group study which found 1 in 5 physicians report using e-prescribing and another 42 percent planned on implementing the technology in 2005. Also, small computing firms and consultants may experience a positive impact in terms of increased demand for their services.

Response: There are three kinds of costs associated with e-prescribing—initial purchase of hardware and software; costs associated with daily use and maintenance, including on-line connectivity; and education and training.

Although e-prescribing is voluntary for physicians and pharmacies, we agree that the cost of implementing and maintaining electronic prescribing technology will be more difficult for small business entities to absorb. However, we believe that those costs could be offset by the grants to physicians that will be made available in 2007, as authorized by section 108 of the MMA. We also believe that our one-year phase-in period for moving from computer-generated prescription facsimiles to true computer-to-computer e-prescribing, as described earlier in section III.1.C. of this final rule, will give small providers and pharmacies the time needed to obtain both funding and acquisition of e-prescribing hardware and software. This also should help these entities better absorb the upfront costs associated with e-prescribing adoption.

In addition, physicians and pharmacies will be able to take advantage of incentives for adoption of e-prescribing technologies from hospitals, plans and other entities, which will be created under an e-prescribing exception under the Stark law and an e-prescribing safe harbor under the anti-kickback statute as discussed earlier in the preamble of this final rule.

Finally, small business entities do not conduct their operations in a vacuum and, as prudent business practice dictates, they should be upgrading their hardware and software on a regular basis. As a result, much of the costs of changing over to new e-prescribing technology should be absorbed as a usual cost of doing business, and may be additionally offset as allowable business-related, tax-deductible expenditures.

A second kind of cost is the cost of daily operations and maintenance, including internet access. Some small providers and pharmacies already have internet capability for handling bills and claims. As the computerization of payment-related transactions become more and more common, small providers and pharmacies increasingly will acquire internet access. As a result, such costs may be sunk costs with respect to e-prescribing.

Further, the costs of more sophisticated internet access, such as high-speed internet connectivity, are negligible in the context of annual costs and revenues of virtually any health care provider. Even in the most remote rural areas, satellite internet access is available at costs similar to those in the most ''connected'' urban areas. Internet access through power lines is on the verge of equally widespread and low cost access. For all practical purposes, the cost of wide-band ''Wi-Fi'' Internet access in a physician office or neighborhood pharmacy is under $1000 one time investment cost (assuming that a personal computer is not already used for correspondence, billing, or other purposes) and in most cases under $100. In fact, it is free in some municipalities or designated areas in certain cities. Annual connection costs for broadband access are several hundred dollars.

Finally, in this context, software and training costs for e-prescribing loom larger, but are still small. While a prescriber or pharmacist doing negligible levels of business will incur high costs per prescription at even these cost levels, we do not agree that a solo provider with a medical practice large enough to be a source of livelihood, or small pharmacy, faces consequential cost disadvantages in embarking on e-prescribing. Furthermore, nothing in current or reasonably foreseeable circumstances suggests that a provider or pharmacy unwilling to engage in e-prescribing will be forced out of business in the next decade.

L. Impact on Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the standards of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because prescription drugs are dispensed in hospitals to Medicare outpatients, this final rule will have an effect on small rural hospitals. When hospital pharmacies dispense non-Part B prescription drugs to Medicare

hospital outpatients, if the hospital pharmacy is participating in the patient's Part D plan, the hospital pharmacy will bill under Part D. Since the use of the standards adopted by this final rule is required for Part D plans and is voluntary for prescribers and dispensers, we estimate that this final rule will not have a significant impact on small rural hospitals because the e-prescribing provisions are both voluntary and cost-beneficial for prescribers. In-hospital pharmacy units and staff physicians should face the same benefit/cost calculus as their counterparts, and will, therefore, have no net costs imposed upon them by adoption of e-prescribing.

M. Effects on States and Federalism Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that includes a Federal mandate that could result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated for annual inflation (the current threshold is about $120 million). The private sector will incur costs for hardware and software upgrades, and connectivity for implementation of e-prescribing. However, except for MA and PDP plans, this final rule does not include any mandate that will result in this spending because it only deals with the informational standards to be used in voluntarily adopted practices, and, therefore, that spending does not pertain to the thresholds of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Furthermore, we believe that the effects of adoption will be positive, rather than involve net expenditures. Regardless, even using our estimates of significant increases in the use of e-prescribing, we do not believe annual expenditures on installing this capability will reach $120 million annually. Certainly, we expect the only entities that are required to comply, Part D sponsors (and possibly a few existing e-prescribers), to incur only minimal costs, totaling no more than a small fraction of this threshold.

With respect to States, nothing in this final rule mandates any expenditure by States. While some hospitals and other providers are State-owned, our conclusions with respect to each type of affected entity are not affected by ownership status.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. For the same reasons given above, we have determined that States will not incur any direct costs as a result of this final rule. However, as discussed extensively in this preamble, and as mandated by section 1860D–4(e) of the Act, some State laws will be preempted. Under the Executive Order, we are required to minimize the extent of preemption, consistent with achieving the objectives of the Federal statute, and to meet certain other conditions. We believe that, taken as a whole, this final rule will meet these requirements. We did seek comments from States and other entities on possible problems and on ways to minimize conflicts, consistent with achieving the objectives of the MMA, and will be undertaking outreach to States on these issues.

We have consulted with the National Association of Boards of Pharmacy directly and through participation in NCVHS hearings, and we believe that the approach we suggest as to the scope of preemption discussed earlier in the preamble provide both States and other affected entities the best possible means of addressing preemption issues. This section, together with the earlier preamble section entitled ''State Preemption,'' constitute the Federalism summary impact statement required under the Executive Order.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations, (HMO), Health professions, Incorporation by reference, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble in this final regulation, the Centers for Medicare & Medicaid Services amends 42 CFR part 423 as follows:

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 1. The authority citation for part 423 continues to read as follows:

Authority: Secs 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart D—Cost Control and Quality Improvement Requirements

■ 2. The heading for subpart D is revised to read as set forth above.

■ 3. In § 423.150, paragraph (c) is revised to read as follows:

§ 423.150 Scope.

* * * * *

(c) Electronic prescription drug programs for prescribers, dispensers, and Part D sponsors.

* * * * *

■ 4. Section 423.159 is amended by revising the heading and adding a new paragraph (a) to read as follows:

§ 423.159 Electronic prescription drug program.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Dispenser means a person or other legal entity licensed, registered, or otherwise permitted by the jurisdiction in which the person practices or the entity is located to provide drug products for human use by prescription in the course of professional practice.

Electronic media has the same meaning given this term in 45 CFR 160.103.

E-prescribing means the transmission using electronic media, of prescription or prescription-related information between a prescriber, dispenser, pharmacy benefit manager, or health plan, either directly or through an intermediary, including an e-prescribing network. E-prescribing includes, but is not limited to, two-way transmissions between the point of care and the dispenser.

Electronic prescription drug program means a program that provides for e-prescribing for covered Part D drugs prescribed for Part D eligible individuals.

Prescriber means a physician, dentist, or other person licensed, registered, or otherwise permitted by the U.S. or the jurisdiction in which he or she practices, to issue prescriptions for drugs for human use.

Prescription-related information means information regarding eligibility for drug benefits, medication history, or related health or drug information for Part D eligible individuals.

* * * * *

■ 5. Section 423.160 is added to read as follows:

§ 423.160 Standards for electronic prescribing.

(a) *General rules.* (1) Part D sponsors must establish and maintain an electronic prescription drug program that complies with the applicable

standards in paragraph (b) of this section when transmitting, directly or through an intermediary, prescriptions and prescription-related information using electronic media for covered Part D drugs for Part D eligible individuals.

(2) Except as provided in paragraph (a)(3) of this section, prescribers and dispensers that transmit, directly or through an intermediary, prescriptions and prescription-related information using electronic media must comply with the applicable standards in paragraph (b) of this section when e-prescribing for covered Part D drugs for Part D eligible individuals.

(3) *Exemptions.* (i) Entities transmitting prescriptions or prescription-related information by means of computer-generated facsimile are exempt from the requirement to use the NCPDP SCRIPT Standard adopted by this section in transmitting such prescriptions or prescription-related information.

(ii) Entities may use either HL7 messages or the NCPDP SCRIPT Standard to transmit prescriptions or prescription-related information internally when the sender and the recipient are part of the same legal entity. If an entity sends prescriptions outside the entity (for example, from an HMO to a non-HMO pharmacy), it must use the adopted NCPDP SCRIPT Standard or other applicable adopted standards. Any pharmacy within an entity must be able to receive electronic prescription transmittals for Medicare beneficiaries from outside the entity using the adopted NCPDP SCRIPT Standard. This exemption does not supersede any HIPAA requirement that may require the use of a HIPAA transaction standard within an organization.

(iii) Entities transmitting prescriptions or prescription-related information where the prescriber is required by law to issue a prescription for a patient to a non-prescribing provider (such as a nursing facility) that in turn forwards the prescription to a dispenser are exempt from the requirement to use the NCPDP SCRIPT Standard adopted by this section in transmitting such prescriptions or prescription-related information.

(4) In accordance with section 1860D–4(e)(5) of the Act, the standards under this paragraph (b) of this section supersede any State law or regulation that—

(i) Is contrary to the standards or restricts the ability to carry out Part D of Title XVIII of the Act; and

(ii) Pertains to the electronic transmission of medication history and of information on eligibility, benefits, and prescriptions with respect to covered Part D drugs under Part D of Title XVIII of the Act.

(b) *Standards.* (1) *Prescription.* The National Council for Prescription Drug Programs SCRIPT Standard, Implementation Guide, Version 5, Release 0, May 12, 2004, to provide for the communication of a prescription or prescription-related information between prescribers and dispensers, for the following:

(i) Get message transaction.

(ii) Status response transaction.

(iii) Error response transaction.

(iv) New prescription transaction.

(v) Prescription change request transaction.

(vi) Prescription change response transaction.

(vii) Refill prescription request transaction.

(viii) Refill prescription response transaction.

(ix) Verification transaction.

(x) Password change transaction.

(xi) Cancel prescription request transaction.

(xii) Cancel prescription response transaction.

(2) *Eligibility.* (i) The Accredited Standards Committee X12N 270/271-Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, A1, October 2002, Washington Publishing Company, 004010X092A1, for transmitting eligibility inquiries and responses between prescribers and Part D sponsors.

(ii) The National Council for Prescription Drug Programs Telecommunication Standard Specification, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000 supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, for the NCPDP Data Record in the Detail Data Record, for transmitting eligibility inquiries and responses between dispensers and Part D sponsors.

(c) *Incorporation by reference.* The Director of the Federal Register approves, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, the incorporation by reference of the National Council for Prescription Drug Programs SCRIPT Standard, Implementation Guide, Version 5, Release 0, May 12, 2004, excluding the Prescription Fill Status Notification Transaction (and its three business cases; Prescription Fill Status Notification Transaction—Filled, Prescription Fill Status Notification Transaction—Not Filled, and Prescription Fill Status Notification Transaction—Partial Fill); the Accredited Standards Committee X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, October 2002, Washington Publishing Company, 004010X092A1, and the National Council for Prescription Drug Programs Telecommunication Standard Specification, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000 supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, for the NCPDP Data Record in the Detail Data Record. You may inspect copies of these materials at the headquarters of the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday from 8:30 a.m. to 4 p.m. or at the National Archives and Records Administration (NARA). For information on the availability of this material at CMS, call 410–786–0273. For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may obtain a copy of the National Council for Prescription Drug Programs SCRIPT Standard, Version 5, Release 0, May 12, 2004, from the National Council for Prescription Drug Programs, Incorporated, 9240 E. Raintree Drive, Scottsdale, AZ 85260–7518; Telephone (480) 477–1000; and FAX (480) 767–1042 or *http://www.ncpdp.org.* You may obtain a copy of the Accredited Standards Committee X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, 004010X092A1, October 2002, from the Washington Publishing Company, 301 West North Bend Way, Suite 107, P.O. Box 15388, North Bend, WA 98045; Telephone (425) 831–4999; and FAX: (425) 831–3233 or *http://www.wpc-edi.com/.* You may obtain a copy of the National Council for Prescription Drug Programs Telecommunication Standard

Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000 supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, for the NCPDP Data Record in the Detail Data Record, from the National Council for Prescription Drug Programs, Incorporated, 9240 E. Raintree Drive, Scottsdale, AZ 85260–7518; Telephone (480) 477–1000; and FAX (480) 767–1042 or *http://www.ncpdp.org*.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 4, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–22026 Filed 11–1–05; 3:17 pm]

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Part IV

Nuclear Regulatory Commission

10 CFR Part 50

Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH29

Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to permit current power reactor licensees to implement a voluntary, risk-informed alternative to the current requirements for analyzing the performance of emergency core cooling systems (ECCS) during loss-of-coolant accidents (LOCAs). In addition, the proposed rule would establish procedures and criteria for requesting changes in plant design and procedures based upon the results of the new analyses of ECCS performance during LOCAs.

DATES: Submit comments by February 6, 2006. Submit comments specific to the information collections aspects of this proposed rule by December 7, 2005. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments on the proposed rule by any one of the following methods. Please include the following number, RIN 3150–AH29, in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

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

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

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

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone (301) 415–1116; e-mail: *rfd@nrc.gov*,

SUPPLEMENTARY INFORMATION:

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I. Background

During the last few years, the NRC has had numerous initiatives underway to make improvements in its regulatory requirements that would reflect current knowledge about reactor risk. The overall objectives of risk-informed modifications to reactor regulations include:

(1) Enhancing safety by focusing NRC and licensee resources in areas commensurate with their importance to health and safety;

(2) Providing NRC with the framework to use risk information to take action in reactor regulatory matters, and

(3) Allowing use of risk information to provide flexibility in plant operation and design, which can result in reduction of burden without compromising safety, improvements in safety, or both.

In stakeholder interactions, one candidate area identified for possible revision was emergency core cooling system (ECCS) requirements in response to postulated loss-of-coolant accidents (LOCAs). The NRC considers that large break LOCAs to be very rare events. Requiring reactors to conservatively withstand such events focuses attention and resources on extremely unlikely events. This could have a detrimental effect on mitigating accidents initiated by other more likely events. Nevertheless, because of the interrelationships between design features and regulatory requirements, making changes to technical requirements of certain parts of the regulations on ECCS performance has the potential to affect many other aspects of plant design and operation. The NRC has evaluated various aspects of its requirements for ECCS and LOCAs in light of the very low estimated frequency of the large LOCA initiating event.

A. Deterministic Approach

The NRC has established a set of regulatory requirements for commercial nuclear reactors to ensure that a reactor facility does not impose an undue risk to the health and safety of the public, thereby providing reasonable assurance of adequate protection to public health and safety. The current body of NRC regulations and their implementation are largely based on a ''deterministic'' approach.

This deterministic approach establishes requirements for engineering margin and quality assurance in design, manufacture, and construction. In addition, it assumes that adverse conditions can exist (e.g., equipment failures and human errors) and establishes a specific set of design basis events (DBEs) for which specified acceptance criteria must be satisfied. Each DBE encompasses a spectrum of similar but less severe accidents. The deterministic approach then requires that the licensed facility include safety systems capable of preventing and/or mitigating the consequences of those DBEs to protect public health and safety. While the requirements are stated in deterministic terms, the approach contains implied elements of probability (qualitative risk considerations), from the selection of accidents to be analyzed to the system level requirements for emergency core cooling (e.g., safety train redundancy and protection against single failure). Structures, systems or components (SSC) necessary to defend against the DBEs were defined as ''safety-related,'' and these SSCs were the subject of many regulatory requirements designed to ensure that they were of high quality, high reliability, and had the capability to perform during postulated design basis conditions.

Defense-in-depth is an element of the NRC's safety philosophy that employs successive measures, and often layers of measures, to prevent accidents or mitigate damage if a malfunction, accident, or naturally caused event occurs at a nuclear facility. Defense-in-depth is used by the NRC to provide redundancy through the use of a multiple-barrier approach against fission product releases. The defense-in-depth philosophy ensures that safety will not be wholly dependent on any single element of the design, construction, maintenance, or operation of a nuclear facility. The net effect of incorporating defense-in-depth into reactor design, construction, maintenance and operation is that the facility or system in question tends to be less susceptible to, as well as more tolerant of failures and external challenges.

The LOCA is one of the design basis accidents established under the deterministic approach. If coolant is lost from the reactor coolant system and the event cannot be terminated (isolated) or the coolant is not restored by normally operating systems, it is considered an ''accident'' and then subject to mitigation and consideration of potential consequences. If the amount of coolant in the reactor is insufficient to provide cooling of the reactor fuel, the fuel would be damaged, resulting in loss of fuel integrity and release of radiation.

B. History of Requirements and Design for LOCAs

When the first commercial reactors were being licensed, design-basis LOCAs were assumed to have the potential of leading to substantial fuel melting. Therefore, emphasis was placed on containment capability, low containment leak rate, heat transfer out of the containment to prevent unacceptable pressure buildup, and containment atmospheric cleanup systems. The earliest commercial reactor containments were designed to confine the fluid release from a double-ended guillotine break (DEGB) of the largest pipe in the reactor coolant system (RCS). These early designs had long-term core cooling capability, but before 1966, high-capacity emergency makeup systems were not required.

During the review of applications for construction permits for large power reactors in 1966, evaluations of the possibility of containment basemat melt-through made it apparent to the Atomic Energy Commission (AEC) and the Advisory Committee on Reactor Safeguards (ACRS) that a containment might not survive a core meltdown accident. An ECCS task force was appointed to study the problem. In 1967, the task force concluded that a more reliable, high-capacity ECCS was needed to ensure that larger plants could safely cope with a major LOCA. The General Design Criteria (GDC) in Appendix A to 10 CFR Part 50, which were being developed at the time, included requirements to this effect. The ECCS was to be designed to accommodate pipe breaks up to and including a DEGB of the largest pipe in the RCS.

In 1971, General Design Criterion 35 was finalized (36 FR 3256; February 20, 1971, as corrected, 36 FR 12733; July 7, 1971). GDC 35 states:

> *Emergency core cooling.* A system to provide abundant emergency core cooling shall be provided. The system safety function shall be to transfer heat from the reactor core following any loss of reactor coolant at a rate such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented and (2) clad metal-water reaction is limited to negligible amounts.
>
> Suitable redundancy in components and features, and suitable interconnections, leak detection, and isolation capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite

power is not available) the system safety function can be accomplished, assuming a single failure.

On January 4, 1974, (39 FR 1002) the Commission adopted 10 CFR 50.46, Acceptance Criteria for Emergency Core Cooling for Light Water Cooled Nuclear Power Reactors. Appendix K to 10 CFR 50 was promulgated with 10 CFR 50.46 to specify required and acceptable features of ECCS evaluation models. Appendix K included assumptions regarding initial and boundary conditions, acceptable models, and imposed conditions for the analysis. In developing Appendix K, conservative assumptions and models were imposed to cover areas where data were lacking or uncertainties were large or unquantifiable.

Later in 1974, the Commission began an effort to quantify the conservatism in the § 50.46 rule and Appendix K to 10 CFR Part 50. From 1974 until the mid-1980's, the AEC, and subsequently the NRC, as well as the regulated industry; embarked on an extensive research program to quantify the conservative safety margins. In 1988, as a result of these research programs, 10 CFR 50.46 was revised to permit the use of realistic (or best-estimate) analyses in lieu of the more conservative Appendix K calculations, provided that uncertainties in the best-estimate calculations are quantified (53 FR 36004; September 16, 1988). Regulatory Guide 1.157 presents acceptable procedures and methods for realistic ECCS evaluation models.

The ECCS cooling performance must be calculated for a number of LOCA sizes (up to and including a double-ended rupture [1] of the largest pipe in the RCS), locations and other properties sufficient to provide assurance that the most severe postulated LOCAs are calculated, using one of the following two types of acceptable evaluation models:

(1) An ECCS model with the required and acceptable features of 10 CFR Part 50, Appendix K, or

(2) A best-estimate ECCS evaluation model which realistically represents the behavior of the reactor system during a LOCA, and includes an assessment of uncertainties which demonstrates that there is a high level of probability that the above acceptance criteria are not exceeded.

The requirements of 10 CFR 50.46 are in addition to any other requirements applicable to ECCS set forth in Part 50, and implement the general requirements for ECCS cooling performance design set forth in GDC 35. Thus, in order to mitigate LOCAs, an ECCS is required to be included in the design of light water reactors. The ECCS is currently required to be designed to mitigate a LOCA from breaks in RCS pipes up to and including a break equivalent in size to a DEGB of the largest diameter RCS pipe. The ECCS is required to have sufficient redundancy that it can successfully perform its function with or without the availability of offsite power and with the occurrence of an additional single active failure.

GDC 35 requires that the ECCS be capable of providing sufficient core cooling during a LOCA even when a single failure is assumed. Standard Review Plan 6.3 interprets this as requiring the ECCS to perform its function during the short-term injection mode in the event of the failure of a single active component and to perform its long-term recirculation function in the event of a single active or passive failure.

All power reactors operating in the United States have multiple trains of ECCS capable of mitigating the full spectrum of LOCAs. Redundant divisions of electrical power and trains of cooling water are also available in pressurized-water reactors (PWRs) and boiling water reactors (BWRs) to support ECCS operation and together, provide the redundancy necessary to meet the single failure criterion.

C. Probabilistic Approach

A probabilistic approach to regulation enhances and extends the traditional deterministic approach by allowing consideration of a broader set of potential challenges to safety, providing a logical means for prioritizing these challenges based on safety significance, and allowing consideration of a broader set of resources to defend against these challenges. In contrast to the deterministic approach, PRAs address a very wide range of credible initiating events and assess the event frequency. Mitigating system reliability is then assessed, including the potential for common cause failures. The probabilistic treatment considers the possibility of multiple failures, not just the single failure requirements used in the deterministic approach. The probabilistic approach to regulation is therefore considered an extension and enhancement of traditional regulation that considers risk (i.e. product of probability and consequences) in a more coherent and complete manner.

D. Commission Policy on Risk-Informed Regulation

The Commission published a Policy Statement on the Use of Probabilistic Risk Assessment (PRA) on August 16, 1995 (60 FR 42622). In the policy statement, the Commission stated that the use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data, and in a manner that complements the deterministic approach and that supports the NRC's defense-in-depth philosophy. PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available. The policy statement also stated that, in making regulatory judgments, the Commission's safety goals for nuclear power reactors and subsidiary numerical objectives (on core damage frequency and containment performance) should be used with appropriate consideration of uncertainties.

In addition to quantitative risk estimates, the defense-in-depth philosophy is invoked in risk-informed decision-making as a strategy to ensure public safety because both unquantified and unquantifiable uncertainties exist in engineering analyses (both deterministic analyses and risk assessments). The primary need with respect to defense-in-depth in a risk-informed regulatory system is guidance to determine which measures are appropriate and how good these should be to provide sufficient defense-in-depth.

Risk insights can clarify the elements of defense-in-depth by quantifying their benefit to the extent practicable. Although the uncertainties associated with the importance of some elements of defense-in-depth may be substantial, the quantification of the resulting safety enhancement can aid in determining how best to achieve defense-in-depth. Decisions on the adequacy of, or the necessity for, elements of defense should reflect risk insights gained through identification of the individual performance of each defense system in relation to overall performance.

To implement the Commission Policy Statement, the NRC developed guidance on the use of risk information for reactor license amendments and issued Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessments in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis,'' (ADAMS No. ML023240437). This RG provided guidance on an acceptable approach to risk-informed decision-making

[1] In this document, the terms ''rupture'' and ''break'' are used interchangeably with no intended difference in meaning.

consistent with the Commission's policy, including a set of key principles. These principles include:

(1) Being consistent with the defense-in-depth philosophy;

(2) Maintaining sufficient safety margins;

(3) Allowing only changes that result in no more than a small increase in core damage frequency or risk (consistent with the intent of the Commission's Safety Goal Policy Statement); and

(4) Incorporating monitoring and performance measurement strategies.

Regulatory Guide 1.174 further clarifies that in implementing these principles, the NRC expects that all safety impacts of the proposed change are evaluated in an integrated manner as part of an overall risk management approach in which the licensee is using risk analysis to improve operational and engineering decisions broadly by identifying and taking advantage of opportunities to reduce risk; and not just to eliminate requirements that a licensee sees as burdensome or undesirable.

II. Rulemaking Initiation

The process described in RG 1.174 is applicable to changes to plant licensing bases. As experience with the process and applications grew, the Commission recognized that further development of risk-informed regulation would require making changes to the regulations. In June 1999, the Commission decided to implement risk-informed changes to the technical requirements of Part 50. The first risk-informed revision to the technical requirements of Part 50 consisted of changes to the combustible gas control requirements in 10 CFR 50.44 (68 FR 54123; September 16, 2003). The NRC also decided to examine the requirements for large break LOCAs. A number of possible changes were considered, including changes to GDC 35 and changes to § 50.46 acceptance criteria, evaluation models, and functional reliability requirements. The NRC also proposed to refine previous estimates of LOCA frequency for various sizes of LOCAs to more accurately reflect the current state of knowledge with respect to the mechanisms and likelihood of primary coolant system rupture.

Industry interest in a redefined LOCA was shown by filing of a Petition for Rulemaking (PRM 50–75) by the Nuclear Energy Institute (NEI) in February 2002 (ADAMS No. ML020630082). Notice of that petition was published in the **Federal Register** for comment on April 8, 2002 (67 FR16654). The petition requested the NRC to amend § 50.46 and Appendices A and K to allow an option [to the double-ended rupture of the largest pipe in the RCS] for the maximum LOCA break size as ''up to and including an alternate maximum break size that is approved by the Director of the Office of Nuclear Reactor Regulation.'' Seventeen sets of comments were received, mostly from the power reactor industry in favor of granting the petition. A few stakeholders were concerned about potential impacts on defense-in-depth or safety margins if significant changes were made to reactor designs based upon use of a smaller break size. The Commission is addressing the technical issues raised by the petitioner and stakeholders in this proposed rulemaking.

During public meetings, industry representatives expressed interest in a number of possible changes to licensed power reactors resulting from redefinition of the large break LOCA. These include: containment spray system design optimization, fuel management improvements, elimination of potentially required actions for postulated sump blockage issues, power uprates, and changes to the required number of accumulators, diesel start times, sequencing of equipment, and valve stroke times; among others. In later written comments provided after an August 17, 2004, public meeting, the Westinghouse Owners Group concluded that the redefinition of the large break LOCA should have a substantial safety benefit (September 16, 2004; ADAMS No. ML042680079). NEI submitted comments (September 17, 2004; ADAMS No. ML042680080) which included a discussion of six possible plant changes made possible by such a rule. NEI stated its expectation that all six changes would most likely result in a safety benefit. The submittal from the Boiling Water Reactors Owners' Group (BWROG) (September 10, 2004; ADAMS No. ML 042680077) did not specifically address potential safety benefits from redefining the large break LOCA. The BWROG stated that certain design changes (recovering some operating margin, reducing blowdown loads, reducing use of snubbers, etc.) could be made possible by the redefinition.

The Commission SRM of March 31, 2003, (ML030910476), on SECY–02–0057, ''Update to SECY–01–0133, 'Fourth Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR Part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.46 (ECCS Acceptance Criteria)' '' (ML020660607), approved most of the NRC staff recommendations related to possible changes to LOCA requirements and also directed the NRC staff to prepare a proposed rule that would provide a risk-informed alternative maximum break size. The NRC began to prepare a proposed rule responsive to the SRM direction. However, after holding two public meetings, the NRC found that there were significant differences between stated Commission and industry interests. The original concept for Option 3 in SECY–98–300, ''Options for Risk-Informed Revisions to 10 CFR Part 50—'Domestic Licensing of Production and Utilization Facilities','' (ML992870048) was to make risk-informed changes to technical requirements in all of Part 50. The March 2003 SRM, as it related to LOCA redefinition, preserved design basis functional requirements (i.e., retaining installed structures, systems and components), but allowed relaxation in more operational aspects, such as sequencing of emergency diesel generator loads. The Commission supported a rule that allowed for operational flexibility, but did not support risk-informed removal of installed safety systems and components. Stakeholders expressed varying expectations about how broadly LOCA redefinition should be applied and the extent of changes to equipment that might result, based upon their understanding of the intended purpose of the Option 3 initiative.

To reach a common understanding about the objectives of the LOCA redefinition rulemaking, the NRC staff requested additional direction and guidance from the Commission in SECY–04–0037, ''Issues Related to Proposed Rulemaking to Risk-Inform Requirements Related to Large Break Loss-of-Coolant Accident (LOCA) Break Size and Plans for Rulemaking on LOCA with Coincident Loss-of-Offsite Power,'' (March 3, 2004; ML040490133). The Commission provided direction in a SRM dated July 1, 2004 (ML041830412). The Commission stated that the NRC staff should determine an appropriate risk-informed alternative break size and that breaks larger than this size should be removed from the design basis event category. The Commission indicated that the proposed rule should be structured to allow operational as well as design changes and should include requirements for licensees to maintain capability to mitigate the full spectrum of LOCAs up to the DEGB of the largest RCS pipe. The Commission stated that the mitigation capabilities for beyond design-basis events should be controlled by NRC requirements commensurate with the safety significance of these capabilities. The Commission also

stated that LOCA frequencies should be periodically reevaluated and should increases in frequency require licensees to restore the facility to its original design basis or make other compensating changes, the backfit rule (10 CFR 50.109) would not apply. Regarding the current requirement to assume a loss-of-offsite power (LOOP) coincident with all LOCAs, the Commission accepted the NRC staff recommendation to first evaluate the BWROG pilot exemption request before proceeding with a separate rulemaking on that topic.

III. Proposed Action

The Commission proposes to establish an alternative set of risk-informed requirements with which licensees may voluntarily choose to comply in lieu of meeting the current emergency core cooling system requirements in 10 CFR 50.46. Using the alternative ECCS requirements will provide some licensees with opportunities to change other aspects of facility design. The overall structure of the risk-informed alternative is described below. The initial focus for this rulemaking is on operating plants. The Commission does not now have enough information to develop generic ECCS evaluation requirements appropriate to the potentially wide variations in designs for new nuclear power reactors. Promulgation of a similar rule applicable to future plants may be undertaken separately, at a later time, as the Commission's understanding of advanced reactor designs increases.[2] The potential rule changes discussed in this document would, at this time, only apply to nuclear power reactors which currently hold operating licenses. Proposed changes would consist of a new § 50.46a and conforming changes to existing §§ 50.34, 50.46, 50.46a (to be redesignated as § 50.46b), 50.109, 10 CFR Part 50, Appendix A, General Design Criteria 17, 35, 38, 41, 44, and 50.

A. Overview of Rule Framework

The proposed rule would divide the current spectrum of LOCA break sizes into two regions. The division between the two regions is delineated by a ''transition break size'' (TBS).[3] The first region includes small size breaks up to and including the TBS. The second region includes breaks larger than the TBS up to and including the DEGB of the largest RCS pipe. ''Break'' in the term, ''TBS'', does not mean a double-ended offset break. Rather, it relates to an equivalent opening in the reactor coolant boundary. Details on selection of the risk-informed LOCA TBS are presented in Section III.B of this supplementary information.

Pipe breaks in the smaller break size region are considered more likely than pipe breaks in the larger break size region. Consequently, each break size region will be subject to different ECCS requirements, commensurate with likelihood of the break. LOCAs in the smaller break size region must be analyzed by the methods, assumptions and criteria currently used for LOCA analysis; accidents in the larger break size region will be analyzed by less stringent methods based on their lower likelihood. Although LOCAs for break sizes larger than the transition break will become ''beyond design-basis accidents,'' the NRC would promulgate regulations ensuring that licensees maintain the ability to mitigate all LOCAs up to and including the DEGB of the largest RCS pipe. Design information for systems and components addressing the capability to mitigate LOCAs in the larger than TBS region would still be part of a plant's ''design basis,'' as that term is defined in § 50.2, even though that equipment would be used to mitigate a beyond design-basis accident. Since they would be mitigated to prevent core damage, LOCAs in the larger than TBS region would not be considered ''severe accidents,'' which are addressed by voluntary industry guidelines. The ECCS requirements for both regions are discussed in detail in Section III.C of this supplementary information.

Licensees who perform LOCA analyses using the risk-informed alternative requirements may find that their plant designs are no longer limited by certain parameters associated with previous DEGB analyses. Reducing the DEGB limitations could enable licensees to propose a wide scope of design or operational changes up to the point of being limited by some other parameter associated with any of the required accident analyses. Potential design changes include optimization of containment spray designs, modifying core peaking factors, optimizing setpoints on accumulators or removing some from service, eliminating fast starting of one or more emergency diesel generators, increasing power, etc. Some of these design and operational changes could increase plant safety since a licensee could optimize its systems to better mitigate the more likely LOCAs. The risk-informed § 50.46a option would establish risk acceptance criteria for evaluating all design changes, including those that are made possible by the revised ECCS requirements. These acceptance criteria would be consistent with the criteria for risk-informed license amendments contained in RG 1.174. These criteria would ensure both the acceptability of the changes from a risk perspective and the maintenance of sufficient defense-in-depth. They are discussed in detail in Section III.D of this supplementary information.

The rule would require that all future changes[4] to a facility, technical specifications,[5] or operating procedures made by licensees who adopt 10 CFR 50.46a be evaluated by a risk-informed integrated safety performance (RISP) assessment process which has been reviewed and approved by the NRC via the routine process for license amendments.[6] The RISP assessment process would ensure that all plant changes involved acceptable changes in risk and were consistent with other criteria from RG 1.174 to ensure adequate defense-in-depth, safety margins and performance measurement. Licensees with an approved RISP assessment process would be allowed to make certain facility changes without NRC review if they met § 50.59[7] and § 50.46a requirements, including the criterion that risk increases cannot exceed a ''minimal'' level. Licensees could make other facility changes after NRC approval if they met the § 50.90 requirements for license amendments

[2] The Commission notes that it is undertaking an effort to develop a technology-neutral licensing framework applicable to future advanced reactor designs. See 70 FR 5228 (February 1, 2005).

[3] Different TBSs for pressurized water reactors and boiling water reactors would be established due to the differences in design between those two types of reactors.

[4] The scope of changes subject to the change criteria in paragraph (f) of the proposed rule would be greater than the changes currently subject to § 50.59, which applies only to changes to ''the facility as described in the FSAR.'' The change criteria in the proposed rule would apply to all facility and procedure changes, regardless of whether they are described in the FSAR.

[5] The Commission notes that under the Atomic Energy Act of 1954, as amended, technical specifications are part of the license. Therefore, plant-specific technical specifications must be changed by a license amendment.

[6] Requirements for license amendments are specified in §§ 50.90, 50.91 and 50.92. They include public notice of all amendment requests in the **Federal Register** and an opportunity for affected persons to request a hearing. In implementing license amendments, the NRC typically prepares an appropriate environmental analysis and a detailed NRC technical evaluation to ensure that the facility will continue to provide adequate protection of public health and safety and common defense and security after the amendment is implemented.

[7] Requirements in § 50.59 establish a screening process that licensees may use to determine whether facility changes require prior review and approval by the NRC. Licensees may make changes meeting the § 50.59 requirements without requesting NRC approval of a license amendment under § 50.90.

and the criteria in § 50.46a, including the criterion that risk increases cannot exceed a ''small'' threshold. Potential impacts of the plant changes on facility security would be evaluated as part of the license amendment review process. The safety and security review process for plant changes is discussed further in Section III.G.2 of this supplementary information.

The NRC would periodically evaluate LOCA frequency information. If estimated LOCA frequencies significantly increase, the NRC would undertake rulemaking (or issue orders, if appropriate) to change the TBS. In such a case, the backfit rule (10 CFR 50.109) would not apply.

If previous plant changes were invalidated because of a change to the TBS, licensees would have to modify or restore components or systems as necessary so that the facility would continue to comply with § 50.46a acceptance criteria (see Sections III.B.6 and III.H of this supplementary information). The backfit rule (10 CFR 50.109) also would not apply in these cases.

B. Determination of the Transition Break Size

To help establish the TBS, the NRC developed pipe break frequencies as a function of break size using an expert opinion elicitation process for degradation-related pipe breaks in typical BWR and PWR RCSs (SECY–04–0060, ''Loss-of-Coolant Accident Break Frequencies for the Option III Risk-Informed Reevaluation of 10 CFR 50.46, Appendix K to 10 CFR Part 50, and General Design Criteria (GDC) 35;'' April 13, 2004; ML040860129). This elicitation process is used for quantifying phenomenological knowledge when data or modeling approaches are insufficient. The elicitation focused solely on determining event frequencies that initiate by unisolable primary system side failures related to material degradation.

A baseline TBS was established using these pipe break frequencies as a starting point. This baseline TBS was then adjusted to account for other significant contributing factors that were not explicitly addressed in the expert elicitation process. The following three-step process was used by the NRC in establishing the TBS.

(1) Break sizes for each reactor type (i.e., PWR and BWR) were selected that corresponded to a break frequency of once per 100,000 reactor-years (i.e., 1.0E–5 per reactor-year) from the expert elicitation results.

(2) The NRC then considered uncertainty in the elicitation process, other potential mechanisms that could cause pipe failure that were not explicitly considered in the expert elicitation process, and the higher susceptibility to rupture/failure of specific piping in the RCS.

(3) The NRC adjusted the TBS upwards to account for these factors.

The remainder of this section discusses this process and the bases for the NRC's decision in greater detail.

1. Historical Estimates of LOCA Frequencies

Previous studies documented in WASH–1400 (''Reactor Safety Study—An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants,'' October 1975), NUREG–1150 (''Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants,'' December 1990), and NUREG/CR–5750 (''Rates of Initiating Events at U.S. Nuclear Power Plants: 1987–1995,'' February 1999) developed pipe break frequencies as a function of break size. The earliest studies (i.e., WASH–1400 and NUREG–1150) were based primarily on non-nuclear industry operating experience. A more recent study (i.e., NUREG/CR–5750) was based on a significant amount of nuclear operating experience; however, it only considered the LOCA frequencies associated with precursor leak events and did not separately evaluate the effects of known degradation mechanisms. These previous studies did not comprehensively evaluate the contribution to LOCA frequency for non-piping components other than steam generator tube ruptures. They also did not address all current passive system degradation concerns and did not discriminate among breaks having effective diameters larger than 6 inches. Because of these limitations, these earlier studies were not sufficient to develop a TBS for use within 10 CFR 50.46a.

With over 3,000 reactor-years of operating experience, there is now a much better understanding of the failure frequencies for the various types of piping systems and sizes that are found in light water reactors. In addition, there is a more extensive knowledge of degradation mechanisms that could cause failures in these piping systems. To apply this operating experience and knowledge to risk-informing ECCS requirements, the NRC formed a group of experts with extensive knowledge of plant design, operation, and material performance to develop LOCA frequency estimates using an expert opinion elicitation process.

2. Expert Opinion Elicitation Process

In establishing pipe break frequencies as a function of break size, the NRC used an expert opinion elicitation process with a panel of 12 experts as documented in SECY–04–0060, ''Loss-of-Coolant Accident Break Frequencies for the Option III Risk-Informed Reevaluation of 10 CFR 50.46, Appendix K to 10 CFR Part 50, and General Design Criteria (GDC) 35,'' (April 13, 2004, ML040860129) and NUREG–1829, ''Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process, Draft Report for Comment,'' (June 30, 2005; ML052010464). The LOCA frequency contributions from pipe breaks in the reactor coolant pressure boundary as well as non-piping passive failures were considered in this study. Non-piping passive failure contributions were evaluated in reactor coolant pressure boundary components including the pressurizer, reactor vessel, steam generator, pumps, and valves, as appropriate, for BWR and PWR plant types. LOCA frequencies under normal operational loading and transients expected over a 60 year reactor operating life were developed separately for PWR and BWR plant types, which comprise all the nuclear plants in the U.S. These frequencies represent generic values applicable to the currently operating U.S. commercial nuclear reactor fleet, based on an important assumption implicit in the elicitation, which is that all U.S. nuclear plant construction and operation is in accordance with applicable codes and standards. In addition, plant operation, inspection, and maintenance were generally assumed to occur within the expected parameters allowable by the regulations and technical specifications.

The uncertainty associated with each expert's generic frequency estimates was also estimated. This uncertainty was associated with each expert's confidence in their generic estimates and frequency differences stemming from broad plant-specific factors, but did not consider factors specific to any individual plants. Thus, the uncertainty bounds of the expert elicitation do not represent LOCA frequency estimates for individual plants that deviate from the generic values. Variability among the various experts' results was also examined. A number of sensitivity analyses were conducted to examine the robustness of the LOCA frequency estimates to assumptions made during the analysis of the experts' responses.

The LOCA frequency estimates developed using this process are consistent with operating experience for

small breaks and precursor leaks and exhibit trends that are expected based on an understanding of passive system failure processes. This is important because it is expected from the results that the most significant LOCA frequency contribution occurs from degradation-induced precursors such as cracking and wall thinning. The LOCA frequency estimates are also comparable to prior LOCA frequency estimates.

There is significant uncertainty associated with the final LOCA frequency estimates caused by both individual expert opinion uncertainty and variability among the experts' opinions. The estimates also depend on certain assumptions used to process the experts' input. In addition, the effect of licensees' safety culture can significantly influence the cause, detection, and mitigation of degradation of safety components.

As a starting point, the NRC selected break sizes associated with a mean frequency of 10^{-5} per reactor-year using both geometric and arithmetic aggregations of individual expert opinion. For PWRs, this corresponds to a range of values from approximately 4 inches to 7 inches equivalent diameter, and for BWRs, from approximately 6 inches to 14 inches equivalent diameter. To address the uncertainty in the expert opinion elicitation estimates, the staff selected a pipe break frequency having approximately a 95th percentile probability of 10^{-5} per reactor-year which resulted in a range of values from approximately 6 inches to 10 inches equivalent diameter for PWRs and from approximately 13 inches to 20 inches equivalent diameter for BWRs. However, this does not account for all failure mechanisms. In addition, the results of an expert opinion elicitation do not have the same weight as actual failure data. Therefore, choosing the 95th percentile values gathered from the expert opinion elicitation leaves additional margin for uncertainty than would be necessary if the mean frequency had been calculated from actual failure data.

3. Adjustments To Address Failure Mechanisms Not Considered by the Expert Elicitation

The expert elicitation process was chartered to consider only LOCAs that could result from material degradation-related failures of passive components under normal operational conditions. There are also LOCAs resulting from failures of active components and other LOCAs resulting from low probability events (such as earthquakes of magnitude larger than the safe shutdown earthquake, etc.) that contribute to the determination of pipe break frequencies. These LOCAs have a strong dependency on plant-specific factors. The NRC has evaluated the applicability of both LOCAs caused by failures of active components and those that could result from low probability events, as discussed below.

The NRC approach for the selection of the TBS is to use the frequency estimates of various degradation-related pipe breaks as a starting reference point. The frequencies for degradation-related breaks represent generic information, broadly applicable for indicating the trend of the frequency as the break size increases. In addition to the degradation-related frequency estimates, there are other important considerations in estimating overall LOCA frequencies. These include LOCAs caused by failures of active components; seismically-induced LOCAs (both with and without pipe degradation), and LOCAs caused by dropped heavy loads. Each is discussed below.

a. LOCAs caused by failure of active components, such as stuck-open valves and blown out seals or gaskets.

LOCAs caused by failure of these active components have a greater frequency of occurrence than LOCAs resulting from the failure of passive components. LOCAs resulting from the failure of active components are considered small-break (SB) LOCAs, when considering components which could fail open or blow out (*e.g.,* safety valves, pump seals). Active LOCAs resulting from stuck-open valves are limited by the size of the auxiliary pipe. In some PWRs, there are large loop isolation valves in the hot and cold leg piping. However, a complete failure of the valve stem packing is not expected to result in a large flow area, since the valves are back-seated in the open configuration. Based on these considerations, active LOCAs are relatively small in size and are bounded by the selected TBS.

b. Seismically-induced LOCAs, both with and without material degradation.

Seismically-induced LOCA break frequencies can vary greatly from plant to plant because of factors such as site seismicity, seismic design considerations, and plant-specific layout and spatial configurations. Seismic break frequencies are also affected by the amount of pipe degradation occurring prior to postulated seismic events. Seismic PRA insights have been accumulated from the NRC Seismic Safety Margins Research Program and the Individual Plant Examination of External Events submittals. Based on these studies, piping and other passive RCS components generally exhibit high seismic capacities and, therefore, are not significant risk contributors. However, these studies did not explicitly consider the effect of degraded component performance on the risk contributions.

The NRC is conducting a study to evaluate the seismic performance of undegraded and degraded passive system components. This effort is examining operating experience, seismic probabilistic risk assessment (PRA) insights, and models to evaluate the failure likelihood of undegraded and degraded piping. The operating experience review is considering passive component failures that have occurred as a result of strong motion earthquakes in nuclear and fossil power plants as well as other industrial facilities. No catastrophic failures of large pipes resulting from earthquakes between 0.2g and 0.5g peak ground acceleration have occurred in power plants. However, piping degradation could increase the LOCA frequency associated with seismically-induced piping failures. When completed, the results of this study could indicate that licensees choosing to implement this voluntary rule must perform a site-specific seismic assessment. The purpose of the assessment would be to demonstrate that RCS piping, assuming degradation that would not be precluded by implementing a licensee's inspection and repair programs, will withstand earthquakes such that the seismic contribution to the overall frequency of pipe breaks larger than the TBS is insignificant. If needed, this assessment would be required to be submitted as a part of a licensee's application for approval to implement the § 50.46a alternative ECCS requirements. Specific guidance for making these determinations would be provided by the NRC in the regulatory guide pertaining to this rule.

Plant-specific assessments could be needed because the seismically-induced break frequencies (direct and indirect) are governed by site hazard estimates, plant-specific configurations, and individual plant design. The NRC's generic analysis, by its very nature, cannot reasonably encompass all potential plant-to-plant variations. For some plants, a plant-specific assessment could be a relatively simple evaluation to show that the likelihood of breaks larger than the TBS is sufficiently low because of a low seismic hazard and consequently very low stresses. For other plants, an assessment might involve performing more detailed plant-specific calculations to better estimate seismic stresses and other parameters, or developing augmented plant-specific

in-service inspection programs for very strict control of pipe degradation. These programs would be designed to detect and repair piping flaws that could increase the likelihood of seismically-induced pipe breaks with cumulative area larger than the TBS. Other approaches, including more detailed studies, generically or for group of plants with similar characteristics from the perspective of this issue, could also be undertaken.

The NRC is continuing work to assess the likelihood of seismically-induced pipe breaks larger than the TBS. These analyses are generic in nature and make use of a combination of insights from deterministic and probabilistic considerations. To facilitate public comment on the technical aspects of this issue, an NRC report outlining the details and results of the NRC's approach will be posted in December 2005 on the NRC rulemaking Web site at *http://ruleforum.llnl.gov*. Stakeholders should periodically check the NRC rulemaking web site for this information. (See Section III.J.2 of this supplementary information.)

Since a plant-specific seismic assessment requirement might be included in the final rule, the NRC is requesting specific public comments on potential options and approaches to address this issue. (See Section III.J.3. of this supplementary information)

c. LOCAs caused by dropped heavy loads.

Another consideration in selecting the TBS is the possibility of dropping heavy loads and causing a breach of the RCS piping. During power operation, personnel entry into the containment is typically infrequent and of short duration. The lifting of heavy loads that if dropped would have the potential to cause a LOCA or damage safety-related equipment is typically performed while the plant is shutdown. The majority of heavy loads are lifted during refueling evolutions when the primary system is depressurized, which further reduces the risk of a LOCA and a loss of core cooling. If loads are lifted during power operation, they would not be loads similar to the heavy loads lifted during plant shutdown, e.g., vessel heads and reactor internals. In addition, the RCS is inherently protected by surrounding concrete walls, floors, missile shields and biological shielding. Therefore, based on this information, the contribution of heavy load drops on LOCA frequency is not considered to be significant. Finally, the resolution of GSI–186 (NUREG–0933; ML04250049) resulted in recommendations which are expected to further reduce the overall risk due to heavy load drops in the future.

4. Consideration of Connected Auxiliary Piping

Other considerations in selecting the TBS were actual piping system design (*e.g.*, sizes) and operating experience. For example, due to configuration and operating environment, certain piping is considered to be more susceptible than other piping in the same size range. For PWRs the range of pipe break sizes determined from the various aggregations of expert opinion was 6 to 10 inches in diameter (i.e., inside dimension) for the 95th percentile. This is only slightly smaller than the PWR surge lines, which are attached to the RCS main loop piping and are typically 12 to 14 inch diameter Schedule 160 piping (i.e., 10.1 to 11.2 inch inside diameter piping). The RCS main loop piping is in the range of 30 inches in diameter and has substantially thicker walls than the surge lines. The expert elicitation panel concluded that this main loop piping is much less likely to break than other RCS piping. The shutdown cooling lines and safety injection lines may also be 12 to 14 inch diameter Schedule 160 piping and are likewise connected to the RCS. The difference in diameter and thickness of the reactor coolant piping and the piping connected to it forms a reasonable line of demarcation to define the TBS. Therefore, to capture the surge, shutdown cooling, and safety injection lines in the range of piping considered to be equal to or less than the TBS, the NRC specified the TBS for PWRs as the cross-sectional flow area of the largest piping attached to the RCS main loop.

For BWRs, the arithmetic and geometric means of the break sizes having approximately a 95th percentile probability of 10^{-5} per reactor-year ranged from values of approximately 13 inches to 20 inches equivalent diameter. The information gathered from the expert opinion elicitation for BWRs showed that the estimated frequency of pipe breaks dropped markedly for break sizes beyond the range of approximately 18 to 20 inches. In looking at BWR designs, it was determined that typical residual heat removal piping connected to the recirculation loop piping and feedwater piping is about 20 to 24 inches in diameter. It was also recognized that the sizes of attached pipes vary somewhat among plants. Accordingly, the NRC chose a TBS for BWRs based on the larger of either the feedwater or the residual heat removal (RHR) piping inside primary containment. Selecting these pipes results in a TBS equivalent diameter of about 20 inches. Thus, for BWRs, the TBS is specified as the cross-sectional flow area of the larger of either the feedwater or the RHR piping inside primary containment.

The NRC believes these definitions of the TBS provide necessary conservatism to address uncertainties in estimation of break frequencies. In addition, these TBS values are within the range supported by the expert opinion elicitation estimates when considering the uncertainty inherent in processing the degradation-related frequency estimates. Furthermore, the NRC expects that these values will provide regulatory stability such that future LOCA frequency reevaluations are less likely to result in a requirement that licensees undo plant modifications made as a result of implementing 10 CFR 50.46a.

5. Considerations of Break Location and Flow Characteristic

Because the effects of TBS breaks on core cooling vary with the break location, the NRC evaluated whether the frequency of TBS breaks varies with location and whether TBS breaks should, therefore, vary in size with location.

In PWRs, the pressurizer surge line is only connected to one hot leg and the pipes attached to the cold legs are generally smaller than the surge line in size. The cold legs (including the intermediate legs) operate at slightly cooler temperatures and any degradation mechanism that might appear would be expected to progress more slowly in the cold leg than in the hot leg. Therefore, the NRC evaluated whether it may be appropriate to specify a TBS for the cold leg which would be smaller in size than the surge lines. The frequency of occurrence of a break of a given size is composed of both the frequency of a completely severed pipe of that size (a circumferential break) plus the frequency of a partial break of that size in an equal or larger size pipe (a longitudinal break). Therefore, the NRC evaluated an option where the TBS for the hot and cold legs would be distinctly different and would be composed of two components: (1) Complete breaks of the pipes attached to the hot or cold legs at the limiting locations within each attached pipe, and (2) partial breaks of a constant size, as appropriate for either the hot or cold leg, at the limiting locations within the hot or cold legs. The NRC attempted to estimate the appropriate size of the partial break component for the TBS by reviewing the expert elicitation results to determine the frequencies of occurrence of partial breaks in the hot

and cold legs which would be equivalent to the frequency of a complete surge line break. From this, it was found that frequencies of occurrence of partial breaks of a given size are generally lower for the cold leg than for the hot leg. However, other than this general trend, the elicitation results do not contain enough specific detailed information to adequately quantify any specific differences in the frequencies compared to a complete surge line break. Because a smaller size partial break TBS criterion in either the hot or cold legs could not be established, it was determined that the required TBS partial breaks in the hot and cold legs should remain equivalent in size to the internal cross sectional area of the surge line. There is no significant difference in piping or service conditions in BWRs compared to the PWR hot and cold leg differences described above, where a difference in the rates of degradation could be identified. Thus, a smaller size partial break TBS criterion also could not be established for BWRs.

The NRC also evaluated whether TBS breaks should be analyzed as single-ended or double-ended breaks. To address this issue the NRC reviewed the expert elicitation process and the guidance given to the experts in developing their frequency estimates. The NRC concluded that the expert elicitation estimates are based on knowledge of physical pressure retaining component behavior and are not premised on breaks being either single-ended or double-ended. This is a feature of the response of the particular system configuration to the occurrence of the break, *i.e.*, whether reactor coolant can feed either end of the break.

The current design basis analysis for light water reactors requires analysis of a DEGB of the largest pipe in the RCS. Under the proposed rule, all breaks up to and including the TBS would be analyzed in accordance with existing requirements. A possible reason for specifying the TBS for PWRs as double-ended could be that a complete break of the pressurizer surge line would result in reactor coolant exiting both ends of the break. While this is true, the dominant effect in terms of core cooling is loss of the fluid exiting from the hot leg side of the break, with much less effect due to fluid exiting from the pressurizer side. Therefore, specifying the TBS break as an area equivalent to a double-ended break of the surge line would be overly conservative. For BWRs, the effect of a double-ended break area is also considered to be overly conservative. The selected TBS for BWRs based on the larger of the RHR or main feedwater lines would bound breaks of the smaller lines in the reactor recirculation and feedwater piping where a complete break would result in a double-ended discharge flow. Therefore, the NRC has determined that the assumption of a single-ended characteristic of the TBS break reasonably represents the effect of RCS breaks. This conclusion is not inconsistent with the expert opinion elicitation estimates of break frequencies.

6. Effects of Future Plant Modifications on TBS

For the proposed TBS to remain valid at a particular facility, future plant modifications must not significantly increase the LOCA pipe break frequency estimates generated during the expert elicitation and used as the basis for the TBS. For example, the expert elicitation panel did not consider the effects of power uprates in deriving the break frequency estimates. The expert elicitation panel assumed that future plant operating characteristics would remain consistent with past operating practices. The NRC recognizes that significant power uprate allowances may change plant performance and relevant operating characteristics to a degree that they might impact future LOCA frequencies. In applications for power uprates that use or intend to use § 50.46a, the NRC will expect licensees to explain why uprate conditions (*e.g.*, increased flow-induced vibrations and increased potential for flow-assisted corrosion in the reactor coolant pressure boundary piping) do not significantly increase break frequencies.

7. Future Adjustments to TBS

The initial TBS was adjusted upward to account for uncertainties and failure mechanisms leading to pipe rupture that were not considered in the expert elicitation process. As the NRC obtains additional information that may tend to reduce those uncertainties or allow for more structured consideration of mechanisms, the NRC will assess whether the TBS (as defined in the rule) should be adjusted, and may initiate rulemaking to revise the TBS definition to account for this new information. The NRC will also continue to assess the precursors that might be indicative of an increase in pipe break frequencies in plants operating under power uprate conditions to establish whether the TBS would need to be adjusted.

C. Alternative ECCS Analysis Requirements and Acceptance Criteria

The proposed rule would require licensees to analyze ECCS cooling performance for breaks up to and including a double-ended rupture of the largest pipe in the RCS. These analyses must be performed by acceptable methods and must demonstrate that ECCS cooling performance conforms to the acceptance criteria set forth in the rule. For breaks at or below the TBS, § 50.46a(e)(1) of the proposed rule specifies requirements identical to the existing ECCS analysis requirements set forth in § 50.46. However, commensurate with the lower probability of breaks larger than the TBS, § 50.46a(e)(2) of the proposed rule specifies more realistic requirements associated with the rigor and conservatism of the analyses and associated acceptance criteria for breaks larger than the TBS. LOCA analyses for break sizes equal to or smaller than the TBS should be applied to all locations in the RCS to find the limiting break location. LOCA analyses for break sizes larger than the TBS (but using the more realistic analysis requirements) should also be applied to all locations in the RCS to find the limiting break size and location. This analytical approach is consistent with current practice.

1. Acceptable Methodologies and Analysis Assumptions

Under existing § 50.46 requirements, prior NRC approval is required for ECCS evaluation models. Acceptable evaluation models are currently of two types; those that realistically describe the behavior of the RCS during a LOCA, and those that conform with the required and acceptable features specified in Appendix K. Appendix K evaluation models incorporate conservatism as a means to justify that the acceptance criteria are satisfied by an ECCS design. In contrast, the realistic or best-estimate models attempt to accurately simulate the expected phenomena. As a result, comparisons to applicable experimental data must be made and uncertainty in the evaluation model and inputs must be identified and assessed. This is necessary so that the uncertainty in the results can be estimated so that when the calculated ECCS cooling performance is compared to the acceptance criteria, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II contains the documentation requirements for evaluation models. All of these existing requirements would be retained in § 50.46a(e)(1) of the proposed rule for breaks at or below the TBS.

The NRC expects that the level of conservatism of an analysis method used for breaks larger than the TBS would be less than for breaks at or below the TBS. This concept is reflected

in the differences between paragraphs (e)(1) and (e)(2) of § 50.46a, which respectively describe ECCS evaluation requirements for breaks at or below the TBS and breaks larger than the TBS. As noted above, for breaks at or below the TBS, all current requirements, including use of an ECCS evaluation model as defined in the rule, are retained. For larger breaks, paragraph (e)(2) of § 50.46a indicates that only the most important phenomena must be addressed by the analysis method, and that the model must reasonably describe the behavior of the RCS during the LOCA. The term ''analysis method'' is used for the larger than TBS break sizes to indicate that these methods need not be the same as the ECCS evaluation models required for breaks at or below the TBS. To analyze breaks larger than the TBS, a licensee need not use an NRC currently approved evaluation model, plant-specific or generic. A licensee may use a presently approved best-estimate methodology for breaks larger than the TBS. Such an evaluation model would exceed the requirements for analysis methods, and would likely yield margin to the acceptance criteria. Also, these approved models are available for use at most plants for some break sizes.

Licensees would not be required to submit detailed analysis method documentation for LOCAs larger than the TBS. Section 50.46a would not require prior NRC approval of these analysis methods. Licensees would only be required to describe the analysis methods used. Analyses using methods unfamiliar to the NRC or of questionable accuracy would be reviewed by NRC via the inspection process.

As currently required under § 50.46, the analysis must demonstrate with a high level of probability that the acceptance criteria will not be exceeded for breaks at or below the TBS. What constitutes a high level of probability is not delineated in the rule. The position taken in RG 1.157 has been that 95 percent probability constitutes an acceptably high probability. Section 50.46a(e)(1) of the proposed rule retains the high level of probability as the statistical acceptance criterion for breaks at or below the TBS. Because of the much lower frequency of pipe breaks larger than the TBS, proposed § 50.46a(e)(2) relaxes the criterion to ''reasonably'' describe the system behavior for breaks larger than the TBS. The NRC is preparing a regulatory guide which would provide more detailed guidance about meeting this criterion.

Paragraphs 50.46a(e)(1) and (e)(2) would require that the worst break size and location be calculated separately for breaks at or below the TBS and for breaks larger than the TBS up to and including a double-ended rupture of the largest pipe in the RCS. Different methodologies, analytical assumptions, and acceptance criteria will be used for each break size region. Consistent with current § 50.46 requirements, breaks at or below the TBS will be analyzed assuming the worst single failure concurrent with a loss-of-offsite power, limiting operating conditions, and only crediting safety systems. For breaks larger than the TBS, credit may be taken for operation of any and all equipment supported by availability data, along with the use of nominal operating conditions rather than technical specifications limits. This would also include combining actual fuel burnup in decay heat predictions with the corresponding operating peaking factors at the appropriate time in the fuel cycle. The assumptions of loss-of-offsite power and the worst single failure are not required. These more realistic requirements are appropriate because breaks larger than the TBS are very unlikely. Thus, less margin is needed in the analysis of breaks in this region.

As discussed further in Section III.C.3, ''Plant operational requirements related to ECCS analyses,'' § 50.46a(d)(2) would prohibit plant operation in any at-power operating configuration for which maintenance of coolable geometry and long-term cooling for LOCAs larger than the TBS has not been demonstrated. A licensee could analyze planned operating configurations or justify that a particular configuration is bounded by failures assumed in other analyses to limit the number of calculations necessary to support plant operation when equipment is out of service or equipment performance is degraded. The NRC will provide further guidance on analysis methods and assumptions in the regulatory guide issued with the final rule.

2. Acceptance Criteria

ECCS acceptance criteria in proposed § 50.46a(e)(3) for breaks at or below the TBS are the same as those currently required in § 50.46. Therefore, licensees would be required to use an approved methodology to demonstrate that the following acceptance criteria are met for the limiting LOCA at or below the TBS:

i. PCT less than 2200°F;

ii. Maximum local cladding oxidation (MLO) less than 17 percent;

iii. Maximum hydrogen production—core wide cladding oxidation (CWO) less than 1 percent;

iv. Maintenance of coolable geometry; and

v. Maintenance of long-term cooling.

The first two criteria are established to ensure that the clad retains adequate ductility as it is quenched from the elevated temperatures anticipated during a LOCA. Loss of ductility would potentially result in fragmentation of the fuel and loss of a coolable geometry. Clad temperatures in the range of 2200 °F result in rapid decreases in cladding ductility and ductility is reduced when oxidation levels reach 17 percent. The calculated maximum local cladding oxidation must account for the pre-existing oxidation accumulated during burnup and that generated during the LOCA. In addition, oxidation on the inside of the clad surface must also be considered once the clad is calculated to have ruptured. For the majority of current plants, operation is limited by the PCT criterion, as total oxidation levels typically calculated do not exceed approximately 10 percent for most plants. However, as the break size definition for a design basis accident decreases, cladding oxidation can become limiting. Small breaks result in extended periods of time at moderate temperatures, in the range of 1800°F, which can produce oxidation levels as great or greater than short time spans at higher temperatures. The limit on hydrogen production is important for small breaks for the same reason—long periods at moderate temperatures can cause greater clad oxidation and hydrogen production. Only hydrogen calculated to be produced during the LOCA is compared to the CWO limit. The CWO limit was not removed from the breaks at or below the TBS because the requirements of 10 CFR 50.44, ''Combustible Gas Control for Nuclear Power Reactors,'' ensure combustible gas control for beyond design basis accidents only and thus can rely on non-safety systems and less rigorous analysis techniques to demonstrate compliance.

Commensurate with the lower probability of occurrence, the acceptance criteria in proposed § 50.46a(e)(4) for breaks larger than the TBS are less prescriptive:

i. Maintenance of coolable geometry, and

ii. Maintenance of long-term cooling.

The proposed rule would afford licensees flexibility in establishing appropriate metrics and quantitative acceptance criteria for maintenance of coolable geometry. A licensee's metrics and acceptance criteria must realistically demonstrate that coolable core geometry and long-term cooling will be maintained. Unless data or other valid justification criteria are provided, licensees should use 2200 °F and 17 percent for the limits on PCT and MLO,

respectively, as metrics and quantitative acceptance criteria for meeting the proposed rule's acceptance criteria. Other less conservative criteria would be acceptable if properly justified by licensees. In addition, the requirements of 10 CFR 50.44 specify that all containments have the capability for ensuring a mixed atmosphere, thus reducing the potential for hydrogen combustion in the event of a beyond design-basis LOCA. The rule requires that BWRs with Mark III containments and all PWRs with ice condenser containments must have the capability for controlling combustible gas generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region, and BWRs with Mark I and II containments must have inerted containments. Analyses performed to support the § 50.44 rulemaking (68 FR 54141; September 16, 2003) demonstrated that PWRs with large dry containments do not require additional measures to control combustible gas generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region. This bounds the level of oxidation expected in the event of a LOCA larger than the TBS.

3. Plant Operational Requirements Related to ECCS Analyses

The proposed rule would require that a facility be able to mitigate LOCA break sizes larger than the TBS up to and including a double-ended rupture of the largest pipe in the RCS at the limiting location. The licensee must demonstrate this mitigative ability, in part, using evaluation models or analysis methods under § 50.46a(e)(2) to demonstrate compliance with the acceptance criteria in § 50.46a(e)(4). For LOCAs larger than the TBS, licensees must demonstrate compliance with the acceptance criteria in § 50.46a(e)(4) under all at-power operating conditions (i.e., all modes of operation when the reactor is critical). This demonstration is required at-power because LOCAs are most likely to challenge the ECCS acceptance criteria during power operation. These analyses will identify ECCS components and trains (including sufficiently reliable non-safety related systems) that are required to operate to mitigate LOCA break sizes larger than the TBS.

The proposed rule would not require assuming a loss-of-offsite power or a limiting single failure of the ECCS for LOCA analyses performed for breaks larger than the TBS. Thus, it is possible that a licensee's analyses would credit that the full complement of ECCS was available. To ensure that the facility will continue to comply with the acceptance criteria for LOCAs larger than the TBS under any at-power operating configuration allowed by the license, the Commission would require both that the acceptance criteria not be exceeded during any at-power condition that has been analyzed, and that the plant not be placed in any unanalyzed condition.

One circumstance where the ability to comply with the acceptance criteria might be called into question would be if an ECCS train or component was removed from service (such as for maintenance) while the plant is in operation. For this time period, the assumed set of mitigation systems would not be available to respond should a beyond TBS LOCA occur, and the acceptance criteria might not be satisfied. Thus, the licensee would either have to demonstrate that under such conditions the acceptance criteria would not be exceeded, or not place the facility in that configuration. To satisfy this requirement a licensee might prepare analyses showing acceptable results with expected complements of equipment that might be taken out of service or could propose suitable Technical Specifications as part of its application for the facility change that would restrict plant operation to acceptable conditions.

Accordingly, in § 50.46a(d)(2) of the proposed rule, the Commission would require that the facility may not operate in any at-power configuration of operable ECCS components where the ECCS cooling performance for LOCAs larger than the TBS has not been demonstrated to meet the acceptance criteria in § 50.46a(e)(4). The evaluation must be calculated in accordance with § 50.46a(e)(2). Bounding analyses may be performed to reduce the number of model calculations.

4. Restrictions on Reactor Operation

Proposed § 50.46a(e)(5) would allow the Director of the Office of Nuclear Reactor Regulation to impose restrictions on reactor operation if it is determined that the evaluations of ECCS cooling performance are not consistent with the requirements for evaluation models and analysis methods specified in § 50.46a(e)(1) through (e)(4) of this section. Non-compliance may be due to factors such as lack of a sufficient data base upon which to assess model uncertainty, use of a model outside the range of an appropriate data base, models inconsistent with the requirements of Appendix K of Part 50, or phenomena unknown at the time of approval of the methodology. Lack of compliance with methodological requirements would not necessarily result in failure to meet the acceptance criteria of § 50.46a(e)(3) and (e)(4), but, rather, would provide results that could not be relied upon to demonstrate compliance with the appropriate acceptance criteria. Thus, depending upon the specific circumstances, it might be necessary for the NRC to impose restrictions on operation until such issues are settled. This requirement would be included in the proposed rule for consistency with the current ECCS regulations, since it is comparable to existing § 50.46(a)(2).

D. Risk-Informed Changes to the Facility, Technical Specifications, or Procedures

The Commission proposes that licensees who adopt § 50.46a would use an integrated, risk-informed change process to demonstrate the acceptability of all future facility changes, both with and without NRC approval, made under § 50.90 or § 50.59, respectively. This risk-informed integrated safety performance assessment, or RISP assessment, would be required to demonstrate that (1) increases in plant risk (if any) meet appropriate risk acceptance criteria, (2) defense-in-depth is maintained, (3) adequate safety margins are maintained, and (4) adequate performance-measurement programs are implemented.

The Commission considered adopting two sets of change control criteria: One for changes enabled by the new rule,[8] and one for all other changes. The Commission rejected this option because it may be difficult to distinguish between facility changes enabled by § 50.46a and changes that are permitted by the current ECCS requirements in § 50.46.

1. Requirements for the Risk-Informed Integrated Safety Performance (RISP) Assessment Process

A licensee who wishes to implement § 50.46a requirements would submit a license amendment request under § 50.90 and receive prior NRC approval to implement the alternative requirements. As discussed in Section III.C.1 of this supplementary information, the proposed rule would require a description of the method(s)

[8] As discussed in Section III.A of this supplementary information, licensees approved to implement § 50.46a would be able to make facility changes which would not have been permitted without the revised ECCS analyses allowed by the rule. These are considered to be § 50.46a enabled changes. Other changes that licensees could make after adopting this rule could be unrelated to the new § 50.46a, insofar as the basis of the changes and NRC approval, when necessary, would rely on requirements or analyses that do not depend on the new ECCS analyses and acceptance criteria.

and the results of the analyses to demonstrate compliance with the § 50.46a ECCS acceptance criteria and a description of the RISP assessment process to be used in evaluating whether proposed changes to the facility, technical specifications, or procedures meet the requirements in 50.46a(f). In particular, § 50.46a(c)(1)(ii)(A) would require a description of the licensee's PRA model and risk assessment methods, and § 50.46a(c)(1)(ii)(B) would require a description of the methods and decisionmaking process for evaluating compliance with the risk criteria, defense-in-depth criteria, safety margin criteria, and performance measurement criteria in § 50.46a(f). The information required to be submitted in the application would form the basis for the NRC's determination of whether the licensee's process will ensure that the requirements of § 50.46a(f)(1) are met for future changes made according to the § 50.59 requirements.

The Commission could approve a licensee's application to implement 10 CFR 50.46a if the criteria in § 50.46a(c)(2) were met. Section 50.46a(c)(2) would require that:

1. The licensee's ECCS analyses and results demonstrate compliance with the ECCS acceptance criteria,

2. The RISP assessment process assures that all facility changes meet the risk assessment requirements of § 50.46a(f), and

3. The RISP assessment process ensures that changes not requiring prior NRC review and approval are evaluated and comply with § 50.59.

Compliance with the ECCS acceptance criteria is necessary to ensure that licensed facilities are able to adequately mitigate LOCAs of varying sizes and locations. Compliance with the § 50.59 requirements is necessary to ensure that facility changes made without NRC approval do not result in plant conditions that could impact public health and safety. Compliance with the § 50.46a(f) requirements for RISP assessments is required to ensure that facility changes result in acceptable changes in risk, adequate defense-in-depth and safety margins are maintained, and acceptable performance-measurement programs are implemented. The § 50.46a(f) requirements are discussed individually below.

Sections § 50.46a(f)(1)(ii) and (f)(2)(ii) would describe the risk acceptance criteria that the RISP assessment must demonstrate are met. Paragraph (f)(3) would describe the requirements on the defense-in-depth and safety margin evaluations, and on the performance measurement programs. Paragraphs (f)(4) and (f)(5) would describe the requirements on the PRA or non-PRA risk assessment models and methodologies used to determine the impact of the changes on risk.

A RISP assessment process would include quantitative and qualitative risk analysis tools, a framework for evaluating defense-in-depth implications of changes, a framework for evaluating safety margins, and performance-measurement programs that monitor the facility and provide feedback of information for timely corrective actions. These attributes have been identified by the Commission as a necessary set of evaluation tools to ensure that changes to the facility do not endanger the public health and safety.

a. Risk acceptance criteria for plant changes under 10 CFR 50.90.

Section 50.46a(f)(2)(ii) would require that the RISP demonstrate, for changes made under § 50.90, that the total increases in core damage frequency (CDF) and large early release frequency (LERF) are small and that the overall plant risk remains small. CDF and LERF are surrogates for early and latent health effects, which are used in the NRC's Safety Goals (Safety Goals for the Operation of Nuclear Power Plants; Policy Statement, 51 FR 30028; August 4, 1986). The NRC has used CDF and LERF in making regulatory decisions for over 20 years. Most recently, the NRC endorsed the use of CDF and LERF as appropriate measures for evaluating risk and ensuring safety in nuclear power plants when it adopted RG 1.174 in 1997. Application-specific regulatory guides have been developed on risk-informed IST, ISI, graded quality assurance, and technical specifications. Since the adoption of RG 1.174, the Commission has had eight years of experience in applying risk-informed regulation to support a variety of applications, including amending facility procedures and programs (e.g., IST and ISI programs), amending facility operating licenses (e.g., power up-rates, license renewals, and changes to the FSAR), and amending technical specifications. On the basis of this experience, the Commission believes that CDF and LERF are acceptable measures for evaluating changes in risk as the result of changes to a facility, technical specifications, and procedures, with the exception of certain changes that affect containment performance but do not affect CDF or LERF. Changes that affect containment performance are considered as part of the defense-in-depth evaluation.

Paragraph 50.46a(f)(2)(ii) would require the total increases in CDF and LERF to be small, and the overall plant risk to remain small.[9] As discussed in RG 1.174, whether a change in risk is small depends on a plant's overall risk as measured by the current CDF and LERF. For plants with an overall baseline CDF of 10^{-4} per year or less, small CDF increases are considered to be up to 10^{-5} per year. For plants with an overall baseline CDF greater than 10^{-4} per year, small CDF increases are those of up to 10^{-6} per year. For plants with an overall baseline LERF of 10^{-5} per year or less, small LERF increases are considered to be up to 10^{-6} per year, and for plants with an overall baseline LERF greater than 10^{-5} per year, small LERF increases are considered to be up to 10^{-7} per year. Since 1997, the Commission has applied these quantitative guidelines to individual plant changes and to sequences of plant changes implemented over time. The Commission has found these guidelines and these values (when used together with the defense in depth, safety monitoring, and performance-measurement criteria) are capable of differentiating between changes, and sequences of changes, that are not expected to endanger the public health and safety from those that might. The Commission proposes to use these quantitative guidelines as the basis for determining whether the total increase in CDF and LERF are small and that the overall plant risk remains small.

The Commission requests specific public comments on the acceptability of applying the change in risk acceptance guidelines from RG 1.174 to the total cumulative change in risk from all changes in the plant after adoption of § 50.46a. Should other risk guidelines be used and, if so, what guidelines should be used? (See Section III.J.13 of this supplementary information.)

b. Risk acceptance criteria for plant changes under 10 CFR 50.59.

After the adoption of § 50.46a by a licensee and the approval of the proposed RISP assessment program by the NRC, a risk assessment would be required for all changes to the facility, technical specifications, and procedures that a licensee proposes to make. Section 50.46a(f)(1)(ii) of the proposed

[9] Section 2.2.4 in RG 1.174 clarifies that the acceptance criteria for changes to CDF and LERF are to be compared with the results of a full-scope risk assessment including internal events, external events, full power, low power, and shutdown. All references to CDF and LERF refer to estimates that include the risk from internal events, external events, full power, low power, and shutdown. Therefore the CDF and LERF estimates to be used in § 50.46a evaluations are directly comparable to the acceptance guidelines on CDF and LERF in RG 1.174.

rule would require that the RISP demonstrate, for changes made under § 50.59, that any increases in the estimated risk are ''minimal'' compared to the overall [10] plant risk profile. In the Commission's view, plant changes which individually and taken together involve minimal changes in risk and have no significant impact upon defense-in-depth or safety margins (and do not involve a change to the license), do not result in significant issues involving public health and safety or common defense and security. For such changes, a qualitative assessment instead of a quantitative estimate of the change in risk may be sufficient to demonstrate that the proposed change meets the minimal increase in risk criteria.

For plant changes for which it is possible to quantitatively estimate the resulting change in plant risk, existing guidance in RG 1.174 for NRC review of risk-informed changes does not address a threshold for changes that result in risk increases that might be small enough (i.e., minimal) that the proposed plant change does not warrant review by the NRC. Section 50.59, however, contains guidance on determining when non risk-informed plant changes do not warrant review by the NRC. Consequently, the Commission proposes to develop the new criteria proposed in § 50.46a(f)(1)(ii) to be consistent with ''minimal'' as it is described in supplementary information published with the December 2001 amendment to 10 CFR 50.59 (66 FR 64738).

The Commission believes that if a change in risk is so small that it cannot be reasonably concluded that the risk has actually changed (i.e., there is no clear trend toward increasing the risk), the change need not be considered an increase in risk. If defense-in-depth, safety margins, and performance measurement program criteria are also met, such changes would always have a ''minimal'' increase in risk. However, the Commission believes that the appropriate threshold for ''minimal'' should provide more flexibility than afforded by the description above.

In the December 2001 amendment to § 50.59, the Commission also stated that ''minimal'' as used in § 50.59 is intended to limit the amount of increase in probability or consequences of accidents such that it remains substantially less than a ''significant increase'' as referred to in § 50.92. Therefore the Commission proposes that the ''minimal'' in § 50.46a(f)(1)(ii) should limit the amount of increase in risk such that it remains less than the ''small'' increase permitted in § 50.46a(f)(2)(ii).

As discussed below, RG 1.174 guidelines state that, if the overall CDF is greater than 10^{-4} per year, an increase in CDF greater than 10^{-6} per year is not small. Similarly, if the overall LERF is greater than 10^{-5} per year, an increase in LERF greater than 10^{-7} per year is not small. Conversely, increases in CDF less than 10^{-6} per year and increases in LERF 10^{-7} per year are always small. The Commission proposes to define ''minimal'' as 10 percent of the risk increases that would be small for any licensee. An alternative, consistent with RG 1.174, would be to define minimal as 10 percent of small, and allow small to vary from plant to plant according to the overall plant specific CDF and LERF. For example, minimal could be defined as an increase in CDF less than 10^{-6} per year if the overall CDF is less than 10^{-4} per year, or less than 10^{-7} per year otherwise. However, if correction of a PRA error or new information caused the overall CDF to rise from below to above 10^{-4} per year, the acceptance criteria for minimal would drop from 10^{-6} per year to 10^{-7} per year from one moment to the next. Existing §§ 50.59 and 50.92 provide acceptance criteria that are applicable to all the plants and that do not change with time. Therefore, the Commission believes that, when quantified, a ''minimal'' risk increase would be an increase in CDF less than 10^{-7} per year and an increase in LERF less than 10^{-8} per year. This permits a single risk level to be applied to all plants and limits the likelihood of the acceptable risk level changing as the plant overall risk changes.

Paragraph 50.46a(f)(ii) would also require that the increase in risk from each change is minimal compared to the overall plant-specific risk profile. For licensed facilities which have very low overall risk estimates, the proposed criteria of 10^{-7} per year and 10^{-8} per year for CDF and LERF, respectively, may permit increases that are significantly large compared to the overall plant risk profile. Permitting a licensee to make changes without NRC review that are not minimal compared to the overall plant risk is contrary to the intent of the proposed rule. Therefore, the Commission proposes that, when quantified, a ''minimal'' increase in CDF and LERF must also be an increase of less than 1 percent of the overall plant-specific risk. The Commission expects that the fixed risk threshold on ''minimal'' changes discussed above (i.e., less than 10^{-7} per year and 10^{-8} per year increase in CDF and LERF respectively) will be applicable to most, if not all, plants.

For the reasons discussed above, the Commission proposes that a risk increase, when evaluated quantitatively, would be considered to be ''minimal compared to the overall plant risk profile'' if it meets both of the following criteria:

(1) The increase in CDF less than 10^{-7} per year and an increase in LERF less than 10^{-8} per year, and

(2) The increases in CDF and LERF are increases of less than 1 percent of the overall plant-specific risk.

c. Cumulative risk acceptance criteria.

To satisfy the Commission's proposed requirement in § 50.46a(f)(2)(ii) that the total increases in CDF and LERF are small and overall plant risk remains small, the total risk from all changes since the adoption of § 50.46a must be tracked. It is important to track the total change in risk from changes to the facility, technical specifications, and procedures to ensure that these changes, when taken in total as they are implemented over time, do not contribute more than a small increase in risk. A licensee may always choose to implement a series of changes over time. If tracking the total increase in CDF and LERF criteria were not implemented, a number of smaller changes where every individual change is kept below the proposed rule's risk acceptance criteria could, considered cumulatively, result in a significant increase in risk. The proposed rule's requirement for risk tracking is consistent with RG 1.174, the application-specific RG's, and current staff practice. Tracking the total risk increase caused by implementing related changes over time and comparison of the total against the RG 1.174 criteria has been used for risk-informed in-service testing (IST), in-service inspection (ISI), and integrated leak rate interval extension and is included as part of the § 50.69 risk assessment process. However, tracking the total risk increase caused by sequential risk-informed extensions of technical specification allowed outage times is not required under RG 1.177 guidance for risk-informed technical specification changes. Instead, approved changes must include provisions to control the potential total risk increase by a configuration risk management program that prevents unacceptable risk increases that could be caused by overlapping the extended allowed outage times permitted by the changes.

This rule would require that the cumulative risk increase from all changes be evaluated against the

[10] As with plant changes made under § 50.90, ''overall'' plant risk includes the risk from internal events, external events, full power, low power, and shutdown.

''small'' criteria. Requiring that the total change in risk from a series of changes be compared to the § 50.46a acceptance criteria instead of allowing the risk to be partitioned and individually compared to the acceptance criteria will ensure that the total risk increase of all changes, as they are implemented over time, would not constitute more than a small increase in risk. Current staff practice, consistent with RG 1.174, is to compare the cumulative risk increase from all related changes, and only related changes, to the acceptance guidelines. Regulatory Guide 1.174 also provides additional acceptance guidelines that must be met before permitting unrelated plant changes that might decrease risk to be combined (bundled) together with a group of related changes in a change in risk estimate. Defining and tracking related and bundled changes and separating out the cumulative impact on risk of these changes from all other changes is a complex process. The proposed rule would simplify this process by combining the cumulative increase of all plant changes after adoption of the new rule consistent with the Commission decision that all changes be evaluated using the RISP assessment process. Under this proposal, there is no need to differentiate between related and unrelated changes, and the total cumulative change in risk is directly related to the change in the overall CDF and LERF over time.

The Commission believes that including this requirement in the proposed rule is required to ensure that risk tracking is performed by all licensees and is a necessary element for ensuring that changes which would be permitted by the revised ECCS analyses allowed under § 50.46a do not result in a greater change in risk than intended by the Commission. Comparing the risk increase from each change to the acceptance criteria independently of all previous changes would render the use of the ''small'' criteria inadequate to monitor and control increases in risk from a series of plant changes implemented over time. Defining and tracking the cumulative risk impact of ''related'' changes is complex and impracticable. Furthermore, licensees who approach the acceptance criteria on risk increases may choose to implement other plant changes that reduce risk in order to take advantage of further changes that might otherwise increase risk above the criteria. Comparing the total risk increase to the risk increase criteria will support the Commission philosophy that, consistent with the principles of risk-informed integrated decision making, licensees should have a risk management philosophy in which risk insights are not just used to systematically increase risk, but also to help reduce risk where appropriate and where it is shown to be cost effective.

The Commission requests specific public comments on whether there is an alternative to tracking the cumulative risk increase that is sufficient to provide reasonable assurance of protection to public health and safety and common defense and security. (See Section III.J.12 of this supplementary information.)

The Commission also requests specific public comments on the acceptability of combining § 50.46a related and unrelated changes to meet the risk acceptance criteria. (See Section III.J.11 of this supplementary information.)

Section 50.46a(f)(2)(ii) requires tracking of all proposed plant changes (i.e., changes to the facility, technical specifications, and procedures), but would not require a licensee to include risk increases caused by previous risk-informed changes that were implemented before § 50.46a was adopted. Conversely, licensees who adopt § 50.46a, will be required to include every risk increase caused by every facility, technical specification, or procedure change. Consequently, licensees who adopt § 50.46a before implementing other risk-informed applications, will effectively have a smaller risk increase ''available'' compared to licensees that have already incorporated some risk-informed changes into their overall plant risk before adopting § 50.46a. The Commission does not consider this a safety issue but requests specific public comment on whether this potential inconsistency should be addressed and, if so, how? (See Section III.J.14 of this supplementary information.)

d. Defense-in-depth.

Section 50.46a(f)(3)(i) would require that the RISP assessment demonstrate that defense-in-depth is maintained. Defense-in-depth is an element of the NRC's safety philosophy that employs successive measures to prevent accidents or mitigate damage if a malfunction, accident, or naturally caused event occurs at a nuclear facility. As conceived and implemented by the NRC, defense-in-depth provides redundancy in addition to a multiple-barrier approach against fission product releases. Defense-in-depth continues to be an effective way to account for uncertainties in equipment and human performance. The NRC has determined that retention of adequate defense-in-depth must be assured in all risk-informed regulatory activities. Upon implementation of § 50.46a, all changes to the facility, technical specifications, and procedures will become risk-informed regulatory activities.

In RG 1.174, the NRC developed seven elements that should be utilized in evaluating the level of defense-in-depth provided for nuclear power plants in making risk-informed changes to the licensing basis. Since the adoption of RG 1.174 in 1997, the Commission has had eight years of experience in applying its guidance to a variety of applications, as discussed above. On the basis of this experience, the Commission believes that these elements have generally been effective in either identifying licensee-proposed changes with unacceptable reductions in defense-in-depth, or precluding submission of licensee-initiated changes with unacceptable reductions in defense-in-depth. Accordingly, proposed § 50.46a(f)(3)(i)(A) through (C) would incorporate three of the higher level defense-in-depth elements as criteria that the Commission believes are generally applicable to all proposed risk informed changes. They are:

(1) Preserving a reasonable balance among prevention of core damage, prevention of containment failure (early and late), and consequence mitigation;

(2) Preserving system redundancy, independence, and diversity commensurate with the expected frequency and consequences of challenges to structures, systems and components, and uncertainties; and

(3) Ensuring that the independence of barriers is not degraded.

Criterion 1 is intended to assure that licensees do not unduly rely upon prevention for accident sequences. Demonstration of reasonable balance requires that any increase in the probability of containment failure (early and late) does not significantly increase the frequency of a significant fission product release. Licensees must also retain a level of mitigation to ensure that mitigation capabilities are maintained for accident sequences that lead to relatively late containment failure and result in late radiological releases to the public. Plant changes, and in particular some changes enabled by the new § 50.46a, include a wide variety of containment related changes, including some that may affect the frequency of late containment failure without affecting either CDF or LERF. Thus, this criterion explicitly includes consideration of the impact of a proposed change on late containment failure.

The second criterion, which addresses redundancy, independence, and

diversity, refers to design principles that the Commission has historically employed and that are proven concepts for maintaining safety in the nuclear and other industries.

The third criterion, which requires that independence of barriers is not degraded, is a fundamental aspect of defense-in-depth. As with the second criterion, independence of barriers has long been used to successfully ensure public health and safety.

The proposed rule states that demonstrating that a change satisfies the above three criteria provides assurance, in part, that defense-in-depth is maintained. The four remaining RG 1.174 elements of defense-in-depth relate to over-reliance on programmatic activities, defenses against common cause failures, defenses against human errors, and compliance with the intent of the GDC in Appendix A to 10 CFR Part 50 are not included in the proposed rule. These criteria are relatively specific and their applicability depends on the specific change under consideration. Each of these remaining elements should be evaluated for applicability to each change and, if applicable, the licensee should include these effects in their integrated decision for the proposed change.

e. Safety margins.

Proposed § 50.46a(f)(3)(ii) would require that adequate safety margins are retained to account for uncertainties. These uncertainties include phenomenology, modeling, and how the plant was constructed or is operated. The Commission's concern is that plant changes could inappropriately reduce safety margins, resulting in an unacceptable increase in risk or challenge to plant SSCs. This paragraph would ensure that an adequate safety margin exists to account for these uncertainties, such that there are no unacceptable results or consequences (e.g., structural failure) if an acceptance criterion or limit is exceeded.

f. Performance measuring programs.

Proposed § 50.46a(f)(3)(iii) would require that adequate performance measurement programs and feedback strategies are implemented to ensure that the RISP assessment continues to reflect actual plant design and operation. The RISP assessment includes the risk assessment, maintenance of defense-in-depth, and adequate safety margins. Results from implementation of monitoring and feedback strategies can provide an early indication of unanticipated degradation of performance of plant elements that may invalidate the demonstration by the RISP assessment that the change satisfied all the change criteria.

The section requires that the monitoring programs be designed to detect degradation of SSCs before plant safety is compromised. Permitting degradation to advance until plant safety could be compromised would be inconsistent with the Commission's regulatory responsibility of protecting public safety. The associated strategies should ensure that relevant observations of the monitoring program are fed back into the RISP assessment and result in timely corrective actions as appropriate. Consistent with all risk informed activities, the monitoring, feedback, and corrective action programs should target resources and emphasis on SSCs at a level commensurate with their safety significance.

The Commission expects that licensee will integrate the performance measuring programs required by this section with existing programs for monitoring equipment performance and other operating experience on their site and throughout industry. In particular, monitoring that is performed in conformance with the Maintenance Rule (§ 50.65) could be used when the monitoring performed under the maintenance rule is sufficient to meet the requirements in § 50.46a(f)(3)(iii). Licensees who have implemented previous risk-informed regulatory actions have normally also been required to implement risk-informed monitoring and feedback programs, particularly in the area of risk assessment; for example, licensees who adopt § 50.69 will need to develop relatively extensive risk-informed monitoring and feedback programs. These should be integrated into the proposed paragraph (f)(3)(iii) performance measuring programs to the extent practicable.

2. Requirements for Risk Assessments

The proposed rule is based upon the regulatory premise that the acceptability of licensee-initiated changes should be judged in a risk-informed manner. Thus, risk assessment plays a key role in the regulatory structure of the proposed rule. Various provisions of proposed § 50.46a require the licensee to submit risk information for the purpose of demonstrating that one or more of the criteria in the rule have been met. Inasmuch as PRA methodologies are generally recognized as the best current approach for conducting risk assessments suitable for making decisions in areas of potential safety significance, § 50.46a(f)(4) of the proposed rule requires that a technically adequate PRA be used in demonstrating compliance with the requirements of § 50.46a that would affect the regulatory decision in a substantive manner.

However, the Commission recognizes that non-quantitative PRA assessment methodologies and approaches could also be used to complement or supplement the quantitative aspects of a PRA, especially where performance of a quantitative PRA methodology of the level needed to support a particular decision is not technically justifiable because the safety significance of the decision does not warrant the level of technical sophistication inherent in a PRA. Accordingly, § 50.46a(f)(5) is written to recognize that non-quantitative risk assessment may be utilized.

Because risk information forms a key role in the agency's decisionmaking under this proposed rule, the Commission has determined that it would be prudent to establish in this rule minimum requirements for PRAs and nonquantitative risk assessments to be used in implementing the rule.[11] Establishment of minimum requirements for PRAs and other risk assessments would provide assurance that the numerical and qualitative insights produced by the risk assessments are adequate to support decisions in areas of potential safety significance.

a. Probabilistic Risk Assessment (PRA) requirements.

Proposed § 50.46a(f)(4)(i) through (iv) would set forth the four general attributes of an acceptable PRA for the purposes of this proposed rule. Section 50.46a(f)(4)(i) would require that the PRA address initiating events from internal and external sources, and for all modes of operation including low power and shutdown, that would affect the regulatory decision in a substantial manner. Plant risk is a function of initiating events from both internal and external sources. In addition, plant risk can vary significantly depending upon the plant's operating mode. Studies (''Proposed Staff Plan for Low Power and Shutdown Risk Analysis Research to Support Risk-informed Regulatory Decision Making'', SECY–00–0007, January 12, 2000) have shown that relatively high levels of risk can occur during low power and shutdown modes. Failure to consider sources of risk from internal and external events, or from

[11] These requirements are only intended to be used in conjunction with the proposed rule, and are not intended to be established as generic requirements applicable to other regulatory applications at this time. Although these requirements are drawn from RG 1.174, the Commission has not yet determined whether the requirements should be adopted by rule for generic use outside of § 50.46a.

operating modes that the plant may be placed in, could result in an inaccurate characterization of the level of risk associated with a plant change. Therefore, initiating events from internal and external sources and during all modes of operation must be considered by the PRA, in order to ensure that the effect on risk from licensee-initiated changes is adequately characterized in a manner sufficient to support a technically defensible determination of the level of risk.

Proposed § 50.46a(f)(4)(ii) would require that the PRA calculates CDF and LERF inasmuch as this proposed rule would require that these measures be compared against acceptance criteria established in this proposed rule.

Proposed § 50.46a(f)(4)(iii) states that the PRA must reasonably represent the current configuration and operating practices at the plant. A plant's risk may vary as a plant's configuration or its procedures change. Failure to update the PRA based upon these configuration or procedure changes may result in inaccurate or invalid PRA results when analyzing a proposed change. Accordingly, to ensure that estimates of CDF and LERF adequately reflect the facility for which a decision must be made, the proposed rule would require that the PRA address current plant configuration and operating practices.

Finally, § 50.46a(f)(4)(iv) would require that the PRA have ''sufficient technical adequacy'' including consideration of uncertainty, as well as a sufficient level of detail to provide confidence that the total CDF and LERF, and changes in total CDF and LERF adequately reflect the proposed change. The proposed rule would require the PRA to consider uncertainty because the decision maker must understand the limitations of the particular PRA that was performed to ensure that the decision is robust and accommodates relevant uncertainties. With respect to level of detail, failure to model the plant (or relevant portion of the plant) at the appropriate level of detail may result in calculated risk values that do not appropriately capture the risk significance of the proposed change.

b. Requirements for risk assessments other than PRA.

Risk assessment need not always be performed using PRA. The proposed rule explicitly recognizes the possibility of using risk assessment methods other than PRA to demonstrate compliance with various acceptance criteria in the rule. However, as with PRA methodologies, the Commission believes that minimum quality requirements for PRAs and risk assessments used by a licensee in implementing the rule must be established in the rule. Accordingly, § 50.46a(f)(5) of the proposed rule would establish the minimum requirement for risk assessment methodologies other than PRA. This paragraph would require that the licensee demonstrate that any non-PRA risk assessment methods used in demonstrating compliance with one or more requirements of the proposed rule produce realistic results. The Commission believes that this requirement would provide flexibility to licensees to use the non-PRA risk methodology (or combination of different methodologies) which produces results that are sufficient upon which to base decisions that the various acceptance criteria in the proposed rule have been met.

3. Operational Requirements

The Commission proposes five specific operational requirements that would apply to licensees who are approved to implement § 50.46a. These requirements are set forth in § 50.46a(d) and would remain in effect until such time as the licensee permanently ceases operations by submitting the decommissioning certifications required under § 50.82(a). They are:

(1) Maintain ECCS model(s) and/or analysis method(s) meeting the acceptance requirements of the rule,

(2) Do not exceed ECCS acceptance criteria under any allowed at-power operating configuration and do not place the plant in any at-power operating configuration not analyzed and shown to meet ECCS acceptance criteria,

(3) Evaluate all changes to the facility, technical specifications, or procedures as described in the FSAR, using the NRC-approved RISP assessment process to demonstrate that the risk, defense-in-depth, safety margin and performance-measurement criteria are satisfied,

(4) Implement adequate performance-measurement programs to ensure that the RISP assessment process reflects actual plant design and operation, and

(5) Periodically re-evaluate and update the risk assessments required under § 50.46a(f) to address changes to the plant, operational practices, equipment performance, plant operational experience, and PRA model, and revisions in analysis methods, model scope, data, and modeling assumptions.

Each of the five operational requirements is discussed in detail below.

a. Maintain ECCS model(s) and/or analysis method(s).

Section 50.46a(d)(1) and (d)(2) would require the licensee to maintain the ECCS models and/or methods that are used to demonstrate ECCS performance meets Section 50.46a(e). As stated above, the RISP assessment process must be used for all changes made under § 50.59 or § 50.90. For changes made under § 50.90, the licensee would submit information demonstrating that the ECCS acceptance criteria in Section 50.46a(e)(3) and (e)(4) are met for the change. For changes made under § 50.46a(f)(1), the licensee would need to assure that any impact of the change upon the ECCS performance meets the requirements of § 50.59. Therefore, the proposed rule would require the ECCS models and/or analysis methods to be maintained that meet the requirements of § 50.46a(e)(1) and (e)(2), to ensure that the acceptance criteria in § 50.46a(e)(3) and (e)(4) continue to be met for the plant.

b. Do not place the plant in unanalyzed at-power operating configurations.

The Commission would require in § 50.46a(d)(2) that a facility be provided with an ECCS designed so that its calculated cooling performance conforms to the criteria in § 50.46a(e)(4) for LOCAs involving breaks larger than the TBS, up to and including a double-ended rupture of the largest pipe in the RCS. For LOCAs involving breaks larger than the TBS, the analyses performed will identify ECCS components and trains (including sufficiently reliable non-safety related systems) that are assumed to function in order to demonstrate compliance with the acceptance criteria in paragraph 50.46a(e)(4). The proposed rule would not require assumption of loss-of-offsite power or a limiting single failure of the ECCS for the analyses performed to show acceptance criteria in (e)(4) are met for breaks larger than TBS. Thus, it is possible that a licensee's analysis may take credit for the availability of the full complement of ECCS. To ensure that the facility will continue to comply with the acceptance criteria under any at-power operating configurations (allowed by the license), the Commission will require both that the acceptance criteria not be exceeded during any at-power condition that has been analyzed, and further that the plant not be placed in any unanalyzed condition.

One circumstance where the ability to comply with the acceptance criteria might be called into question would be if an ECCS train or component was removed from service (such as for maintenance) while the plant is in operation, where this would result in the available ECCS trains or components

being less than that assumed in the licensee's analysis for LOCAs involving breaks larger than the TBS. For this time period, the assumed set of mitigation systems would not be available to respond should a LOCA occur, and the acceptance criteria might not be satisfied. Thus, the licensee would either have to be able to demonstrate that under such conditions the acceptance criteria would not be exceeded, or not place the facility in that configuration. To satisfy this requirement a licensee might prepare analyses showing acceptable results with expected complements of equipment that might be taken out of service or could propose suitable technical specifications as part of its application for the facility change that would restrict plant operation to acceptable conditions.

Accordingly, in § 50.46a(d)(2) of the proposed rule, the Commission would require that the facility not operate in any at-power configuration where the ECCS cooling performance available from operable ECCS components has not been evaluated and found to be sufficient to assure that the acceptance criteria in paragraph (e)(4) will be met. The evaluation must be calculated in accordance with § 50.46a(e)(2). Bounding analyses may be performed to reduce the number of model calculations.

c. Evaluate all facility changes using the RISP assessment process.

Section 50.46a(d)(3) would require that, for licensees that use § 50.46a, the integrated, risk-informed change process should be used for all changes made under § 50.59 or § 50.90. For changes made under § 50.90, the licensee would submit the information required in § 50.46a(f)(2), which would include information from the RISP assessment performed for the change. The NRC would review the change as described above. For changes made under § 50.46a(f)(1), which must also meet the requirements of § 50.59, the licensee would be required to evaluate the change using the NRC-approved RISP assessment process and demonstrate that the acceptance criteria in § 50.46a(f) are met.

d. Implement adequate performance-measurement programs.

The Commission acknowledged the importance of monitoring and feedback in risk-informed decisionmaking in RG 1.174, which identified these as one of the five key principles of risk-informed changes to a plant's licensing basis. These programs are important to ensure that (1) the RISP assessment conducted to examine the impact of proposed change(s) continues to reflect the actual design and operation of the plant and (2) no adverse safety degradation occurs as a result of facility, technical specification or procedure changes implemented after a licensee adopts 10 CFR 50.46a as the licensing basis for its facility. NRC experience with RG 1.174 has confirmed that monitoring and feedback are necessary to provide confidence that new information that could change the results of the assessment of proposed changes or affect the acceptability of a previously acceptable change is collected and incorporated into the assessments. Accordingly, the Commission proposes that licensees be required to implement appropriate monitoring and feedback programs. Paragraph (d)(4) would require the licensee to implement performance monitoring programs capable of meeting the acceptance criteria for such programs as described in paragraph (f)(3)(iii).

Section 50.46a(f)(3)(iii)(A) through (C) would require that the performance-measurement programs be designed to detect degradation in SSCs, monitor the SSCs at a level commensurate with their safety significance, and provide feedback of information to allow timely corrective actions to be implemented before plant safety is compromised. When successfully implemented, these programs would ensure that the RISP assessment continues to reflect the risk, defense-in-depth and safety margin attributes during the evaluation of proposed changes, and will ensure that the conclusions that have been drawn from the evaluation about previous changes remain valid.

e. Periodically re-evaluate and update risk assessments.

Key components of risk-informed regulation are the monitoring of changes in plant risk and feedback to the risk assessment and/or plant design activities and processes which are the subject of the risk assessment. Proposed § 50.46a(d)(5) would set forth the proposed rule's requirements governing the periodic re-evaluation and updating of licensee's risk assessments.[12] This paragraph would mandate that a licensee must, following implementation of a change to its facility, technical specifications, or procedures after adopting § 50.46a, periodically reevaluate and update the risk assessments (both PRA and non-PRA) required under § 50.46a(f)(1) and (f)(2). In particular, § 50.46a(d)(5) specifies that the reevaluation and updating must address changes in the risk assessments; revisions in analysis methods, model scope, and modeling assumptions; and changes to the plant, operational practices, equipment performance, and operational data. In addition, the risk assessments may be updated to address, among other things, known errors or limitations in the model, or new information. Accordingly, it is necessary that the risk assessments be updated so that the licensee (and the NRC) will have an accurate understanding of risk at its facility, and that changes implemented since the licencee adopted § 50.46a continue to be acceptable from a safety and risk standpoint (i.e., the facility design and operation continue to be consistent with the assumptions of the risk assessments used to meet the acceptance criteria in § 50.46a(f)(1) or (f)(2)).

The updated risk assessments must continue to meet the minimum quality requirements in § 50.46a(f)(4) and (f)(5) in order to ensure that the updated risk assessments provide the requisite level of quality deemed by the Commission to be the minimum necessary to support reasoned decision making under the proposed rule.

The proposed rule would specify that the reevaluation and updating be conducted ''periodically,'' but no less often than once every two refueling outages. The Commission believes that this is an appropriate period because the uncertainty of risk changes occurring during the two refueling outage period is tolerable and unlikely to result in high risk situations developing as a result of the implementation of plant changes. The Commission's preliminary determination in this regard is based upon the stringent acceptance criteria governing changes initiated under § 50.46a, as well as the existing deterministic criteria in the substantive technical requirements in Part 50 and the criteria utilized in determining the acceptability of plant changes, *e.g.*, §§ 50.46a(f)(1) and 50.59. The updating period specified in the proposed rule is also comparable to other NRC requirements governing updating and reporting of safety information, e.g, §§ 50.59, 50.71(e), as well as the current ASME consensus standard on PRA quality.

With respect to feedback, § 50.46a(d)(5) would require the licensee to take ''appropriate action'' to ensure that all facility design and operation continue to be consistent with the risk assessment assumptions used to meet the acceptance criteria in § 50.46a(f)(1) or (f)(2). Such actions may include (but are not limited to) improvements or corrections to the risk

[12] Reporting requirements relevant to the PRA updating required by this paragraph are set forth in § 50.46a(g)(2) of the proposed rule.

analyses to demonstrate compliance, implementation of changes to offset adverse changes in risk or defense in depth, or reversal of changes previously made under the provisions of § 50.46a(f). The Commission believes that this requirement would provide appropriate flexibility to the licensee to determine the actions necessary to ensure continued compliance with the § 50.46a(f) acceptance criteria, and is consistent with the concept of performance-based regulation.

Finally, § 50.46a(d)(5) would specify that the reevaluation and updating of the risk assessments, and any changes to the facility, technical specifications, or procedures necessary as a result of this periodic reevaluation and updating, shall not be deemed backfitting. The Commission regards the reevaluation and updating to be an inherent part of the regulatory concept of the proposed rule. Hence, this activity, and any licensee action necessary to ensure the continued validity of the associated risk assessments are understood to be part of the regulatory process under this rulemaking, and licensees who voluntarily choose to implement § 50.46a understand that the regulatory process involves such updating, reevaluation, and possible need for making changes to its facility, technical specifications, or procedures.

E. Reporting Requirements

1. ECCS Aanalysis of Record and Reporting Requirements

Reporting requirements for the proposed § 50.46a would be patterned after the existing reporting requirements in § 50.46. Existing 10 CFR 50.46(a)(1) requires that a licensee demonstrate that its ECCS is adequate to meet the acceptance criteria using an approved evaluation model. The results obtained with the evaluation model are often referred to as the ''analysis of record'' (AOR). This AOR is documented in the licensee's FSAR and is also used to establish core operating limits for each cycle according to the licensee's approved reload methodology. Because changes (such as changes to the moderator temperature coefficient and peaking factors) are made to the plant on a cycle specific basis, deviations from the AOR PCT are permitted. Existing requirements in 10 CFR 50.46(a)(3)(i) specify that the licensee estimate the deviation in PCT from such changes (or error corrections). The amount of deviation is calculated by summing the absolute value of each of the individual changes. The licensee's estimate must be accurate but is typically not evaluated by running the accordingly revised evaluation model. Deviations greater than 50°F are deemed ''significant.'' The purpose of the 50°F restriction is to ensure that the evaluation model accurately reflects the plant conditions, the methodology used by the licensee is that reviewed and approved by the NRC, and the changes made to the plant or operation of the plant do not appreciably change the ECCS response.

Existing 10 CFR 50.46(a)(3)(ii) requires the licensee to submit an annual report of these estimated deviations to the NRC. When they are ''significant,'' the licensee is required to contact the NRC within 30 days to schedule a re-analysis or get approval for other actions that may be needed to show compliance with § 50.46 requirements. In establishing the schedule, the NRC will consider the safety significance of the deviation and the proximity of the AOR PCT to the acceptance criterion of 2200 °F. To ensure safety, existing 10 CFR 50.46(a)(3)(ii) also requires the licensee to algebraically sum the estimated individual changes in PCT to ensure that the estimated PCT does not exceed 2200 °F. If this algebraic sum exceeds 2200 °F, or if the changes cause the licensee to not comply with any other acceptance criteria specified in 10 CFR 50.46(b), the licensee must take immediate action to comply with 10 CFR 50.46 and report the event per 10 CFR 50.55(e), 50.72, and 50.73.

When 10 CFR 50.46 was first promulgated, the regulations focused primarily on large break LOCAs (LBLOCAs). Cladding oxidation is a function of both temperature and time at temperature. In LBLOCAs, because of the short period of time at high temperature, oxidation can be treated as a simple function of temperature and is not expected to change if the calculated PCT does not change (as long as the time period at high temperature does not change either). Therefore, the PCT reporting requirement alone was adequate to control changes to ECCS analyses.

However, under the proposed § 50.46a, ECCS capability would be focused on the more likely small break LOCAs where the fuel is subject to high temperatures for longer periods of time. Because time at temperature is just as important as temperature in determining oxidation, cladding oxidation is expected to be the controlling factor in many instances, not PCT. Thus, the Commission proposes to include an additional reporting requirement in § 50.46a. Licensees would report model changes or errors whenever the change in the calculated oxidation or the sum of the absolute values of the changes equals or exceeds 0.4 percent oxidation. This would make the proposed § 50.46a oxidation reporting requirement the same, on a percentage basis, as the existing PCT change reporting requirement.

Under the proposed § 50.46a, for each change to or error discovered in an ECCS evaluation model or analysis method that affects the calculated temperature or level of oxidation, the licensee would be required to report the change or error and its estimated effect on the limiting ECCS analysis to the Commission at least annually. If the change or error is significant, the licensee would provide this report within 30 days and include with the report a proposed schedule for providing a re-analysis or taking other action to show compliance with § 50.46a requirements. For any changes or errors where calculated results exceeded the approved regulatory limit, licensees would be required to take immediate action to come back into compliance with the acceptance criteria.

For breaks equal to or smaller than the TBS (consistent with the existing requirements in § 50.46), § 50.46a(g)(1)(i) would define a significant change as one in which the change in calculated peak fuel temperature differs by more than 50 °F from the peak fuel temperature calculated by the last model or is an accumulation of changes and errors such that the sum of the absolute magnitudes of the respective temperature changes is greater than 50 °F. For oxidation, proposed § 50.46a(g)(1)(i) would define a significant change as when the change in the calculated oxidation, or the sum of the absolute values of the changes in calculated oxidation equals or exceeds 0.4 percent oxidation. For breaks larger than the TBS, § 50.46a(g)(1)(ii) would define a significant change as one which results in a significant reduction in the capability to meet the ECCS acceptance criteria in § 50.46a(e)(4). Guidance for determining what would be considered a significant reduction will be provided in the associated regulatory guide.

2. Risk Assessment Reporting Requirements

Proposed § 50.46a(g)(2) sets forth reporting requirements with respect to the PRA reevaluation and updating required by § 50.46a(d)(5). When reevaluating and updating the PRA and non-PRA risk assessments, § 50.46a(g)(2) would require the licensee to report changes to the NRC if they result in a significant reduction in the capability to meet the requirements of § 50.46a(f).

Changes would be reported to the NRC within 60 days of completion of the PRA update, and would include a description of the PRA changes, as well as an explanation of the reasons for the increase in CDF and/or LERF. The 60 day period is twice the time allowed for reporting of ''significant'' errors and changes to an evaluation model under the current § 50.46. This period ensures sufficient time for the licensee to complete its evaluation and explanation of the significance of such changes, and determine the course of action necessary to address adverse changes in risk, while not unduly delaying the report to the NRC and thereby delaying NRC oversight. The Commission proposed this reporting level to establish a threshold that avoids trivial changes in the relevant calculated risk measures, but provides for NRC awareness of changes that may warrant further oversight. In addition, this paragraph would require that the licensee report include a schedule for implementation of any corrective actions required under § 50.46a(d)(5) for failure to comply with the acceptance criteria in § 50.46a(f)(1) or (f)(2). The Commission believes it should be informed of the licensee's implementation schedule so the NRC can ensure that the licensee takes corrective action on a timely basis, consistent with the safety significance of the change.

3. Minimal Risk Plant Change Reporting Requirement

In § 50.46a(g)(3) the Commission is proposing to require periodic reports by licensees who make ''minimal'' risk plant changes pursuant to § 50.46a(f)(1). This process is comparable in many respects to the § 50.59 process that requires similar reports. The NRC would rely on these reports to identify unexpected numbers of minimal risk changes which would provide for NRC awareness of changes that, taken together, may result in a significant increase in risk.

An alternative would be to require that the cumulative risk increases from minimal risk changes be tracked separately from the cumulative risk increase from all changes, and be compared to another quantitative criterion. In Section III.J.11 of this supplementary information, the Commission seeks public comment about whether there are less burdensome or more effective ways of ensuring that the cumulative impact of an unbounded number of minimal risk changes remains minimal. The Commission notes that other reporting requirements (FSAR updates, ECCS model changes or PRA update results) exist. If reporting of minimal risk changes is required, should reporting be required every 24 months, every two refueling cycles (like the PRA updating), or on a different frequency?

F. Documentation Requirements

The proposed rule contains several documentation requirements. Proposed § 50.46a(h) contains documentation requirements for changes made to a facility and/or operating procedures. When making plant changes under § 50.46a(f), licensees would be required to document the bases for concluding that the acceptance criteria in § 50.46a(f)(1) or (f)(2) and (f)(3) are satisfied. Licensees would also be required under Part II of Appendix K to this part to document the bases of evaluation models used to perform ECCS calculations for break sizes at or below the TBS. For ECCS analysis methods used for breaks larger than the TBS, licensees would be required under § 50.46a(e)(2) to maintain sufficient supporting justification, including the methodology used, to demonstrate that the analytical technique reasonably describes the behavior of the reactor system during LOCAs of varying size from the TBS up to the double-ended rupture of the largest reactor coolant pipe. This information would be reviewed during NRC inspections and/or audits to ensure that the risk criteria in § 50.46a(f) are satisfied and to determine whether the analysis methods (including computer codes) used by licensees adequately demonstrate ECCS performance such that the ECCS acceptance criteria in § 50.46a(e) are met.

G. Submittal and Review of Applications Under § 50.46a

1. Initial Application for Implementing Alternative § 50.46a Requirements

When a licensee first decides to comply with the optional § 50.46a requirements, that licensee must submit an application under 10 CFR 50.90 for NRC review and approval of a license amendment request. The initial application must contain the information required by § 50.46a(c)(1)(i). This includes information required by § 50.46a(e)(1) sufficient to allow the NRC to approve the licensee's evaluation models [13] for design-basis accident LOCAs equal to or smaller than the TBS and a discussion of the method used for analyzing LOCAs larger than the TBS. Analysis methods for LOCAs larger than the TBS would be required to meet the criteria specified in § 50.46a(e)(4), but the proposed rule would not require prior NRC review and approval of these methods.

Licensees must also submit the results of the ECCS analyses performed for LOCAs up to and including the TBS and LOCAs larger than the TBS showing compliance with the acceptance criteria in § 50.46a(e)(3) and (e)(4). A licensee's initial change from its existing ECCS analysis need not be reviewed by the licensee under the provisions of 10 CFR 50.59. Because the proposed rule would require NRC review and approval of the initial license amendment application for compliance with the alternative § 50.46a requirements, there is no purpose served by also requiring licensees to perform a § 50.59 evaluation, since § 50.59 is a process to determine the need for prior NRC approval of a change to a facility or its procedures as described in the FSAR. Once the new § 50.46a evaluation models and initial ECCS LOCA analyses have been approved for use, subsequent changes would be controlled by the existing process in § 50.59 (which provides criteria for determining which changes are within the licensee's authority) and the other requirements in § 50.46a(h) for reporting when changes to evaluation models and analysis methods (whether from correction of errors or changes) is significant.

Proposed § 50.46a(c)(1)(ii) would require the initial application to also contain a description of the RISP assessment process. The RISP assessment process would contain a description of the licensee's PRA and non-PRA risk assessment methods and a description of the methods and decisionmaking process used to show that proposed facility changes comply with the defense-in-depth, safety margins, and performance measurement criteria in proposed § 50.46a(f)(3). The RISP assessment process must also ensure that all future licensee changes to the facility, technical specifications, and procedures as described in the FSAR be evaluated by a RISP assessment which demonstrates that the acceptance criteria in § 50.46a(f) are met and requires that changes made pursuant to § 50.46a(f)(1) are also evaluated under § 50.59.

2. Subsequent Applications for Plant Changes Under § 50.46a Requirements

After NRC approval of a licensee's initial license amendment application addressing ECCS analyses and RISP assessment processes, licensees may submit individual license amendment

[13] If a licensee wishes to continue to use an already approved evaluation model meeting the requirements of Appendix K to 10 CFR Part 50, the licensee should specify the approved model that will be utilized.

applications for plant changes which may not be made under § 50.59 or § 50.46a(f)(1). These individual license amendment applications must contain:

a. The information required by § 50.90,

b. Information from the RISP assessment demonstrating that the risk criteria, defense-in-depth criteria, safety margins and performance monitoring criteria in § 50.46a(f)(2) and (f)(3) are met, and

c. Information demonstrating that the ECCS acceptance criteria in § 50.46a(e)(3) and (e)(4) are met.

After review of the individual plant change license amendment application, the NRC may approve the change if it complies with the above criteria and all other applicable NRC regulations, including requirements for plant physical security. The NRC would evaluate potential impacts of the proposed change on facility security to ensure that the change does not significantly reduce the ''built-in capability'' of the plant to resist security threats, thus ensuring that the change is not inimical to the common defense and security and provides adequate protection to public health and safety.

H. Potential Revisions Based on LOCA Frequency Reevaluations

The NRC plans to periodically evaluate LOCA frequency information. Selection of the TBS was based on several factors including the generic frequency estimates provided by the expert elicitation process. The NRC recognizes that due to unforeseen factors (operating experience, identified degradation or other plant changes), our estimation of LOCA frequencies could change in the future. Although the margins in the TBS as defined in the proposed rule are intended to preclude plant changes as a result of minor changes in break frequency estimates, the NRC believes it is important to include provisions in the rule so that if LOCA frequencies significantly increase, appropriate actions would be taken to protect public health and safety. If an increase in LOCA frequency were sufficient to invalidate the basis for selecting the TBS defined in the proposed rule, the NRC would undertake rulemaking (or issue orders to specific licensees, if appropriate) to change the TBS. In such a case, the backfit rule (10 CFR 50.109) would not apply. Likewise, if future reevaluations of LOCA frequency invalidate the bases for facility changes implemented by a licensee, that licensee would be required to take appropriate action to reduce facility risk to acceptable levels; either by reversing previous facility changes or by making other changes to compensate for the increased risk. In these cases, the backfit rule (10 CFR 50.109) would also not apply (see further discussion in section XV).

I. Changes to General Design Criteria

In several instances, the proposed § 50.46a rule is not consistent with some of the GDC for nuclear power plants contained in 10 CFR Part 50, Appendix A. To eliminate inconsistencies between the deterministic GDC and the risk-informed § 50.46a, the NRC reviewed all of the GDC and is proposing revisions to GDC 17, Electrical power systems, GDC 35, Emergency core cooling, GDC 38, Containment heat removal, GDC 41, Containment atmosphere cleanup, and GDC 44, Cooling water systems. These GDC contain design requirements related to LOCAs, and the definition of LOCA in 10 CFR Part 50 includes breaks larger than the TBS up to and including the DEGB of the largest RCS pipe. Under proposed § 50.46a, breaks larger than the TBS would be beyond design-basis accidents. As a consequence, these GDC would be modified to allow certain LOCA-related § 50.46a requirements for pipe breaks larger than the TBS to differ from the design-basis accident requirements in the GDC. These exceptions are needed because § 50.46a analysis requirements for LOCAs larger than the TBS would not require the assumption of a LOOP and a single failure, which are required by each of these GDC. The likelihood of these large LOCAs is judged to be low enough that the additional mitigation capability currently afforded by the redundancy requirements in these GDC is not necessary. The modifications made to each of the above GDC removes the requirements for assuming a single failure and a LOOP in the assessment of the ECCS capability to perform its intended safety function for beyond design-basis loss of coolant accidents involving pipe breaks larger than the TBS. However, assessment of the ECCS capability for LOCAs involving pipe breaks up to and including the TBS is unchanged from current requirements and must still assume both a single failure and LOOP.

The NRC also reviewed GDC 50, Containment design basis. GDC 50 specifies, in part, that the reactor containment structure shall be designed to accommodate, with sufficient margin, the calculated pressure and temperature from any LOCA. It also lists several factors that should be considered when determining the available margin. The NRC has determined that these factors should also be considered when determining the available margin for accommodating LOCAs larger than the TBS. Under § 50.46a, however, LOCAs larger than the TBS are not design-basis accidents since they are highly unlikely. Nevertheless, reactor containment designs should continue to consider beyond TBS LOCAs, but the methods used to calculate containment temperatures and pressures need not be as conservative as they are for design-basis accidents. Thus, the NRC proposes to modify GDC 50 to specify that under § 50.46a, leak tight containment capability should be maintained for ''realistically'' calculated temperatures and pressures for LOCAs larger than the TBS.

Should licensees make plant modifications under § 50.46a resulting in containment pressures and temperatures that exceed the current design values by a small amount, the NRC will evaluate the acceptability of revised containment structural integrity criteria. Criteria will be provided in a regulatory guide for containment structural integrity that could be used with § 50.46a. However, the acceptability of containment pressures and temperatures exceeding current values will also be evaluated for conformance with the LERF acceptance criteria specified in § 50.46a(f)(2) and the defense-in-depth acceptance criteria in § 50.46a(f)(3). The basis for allowing revision to containment structural integrity criteria is that LOCAs involving pipe breaks larger than the TBS are judged to be of very low probability and are no longer considered to be design basis accidents. The likelihood of LOCAs involving pipe breaks larger than the TBS is judged to be low enough that the large margins currently required in design basis accident assessments are not necessary. However, a realistic assessment of containment structural capability for LOCAs involving pipe breaks larger than the TBS (without consideration of a loss-of-offsite-power and a single failure) is still required to provide defense-in-depth for these low probability initiating events.

The inherent physical robustness of current reactor containments contributes significantly to the ''built-in capability'' of the plant to resist security threats. The Commission expects licensees not to make design modifications to the containment under § 50.46a that would reduce its structural capability (based on realistically calculated containment pressures and temperatures for breaks larger than the TBS) to a level that would compromise plant security.

The NRC considered modifying GDC 4, Environmental and dynamic effects

design bases, based on the TBS as defined in proposed § 50.46a. However, the NRC decided to leave this GDC unchanged for the following reasons. GDC 4, as currently written, contains a provision whereby licensees can exclude designing for dynamic effects associated with piping ruptures from their plants' design bases based on the probability of piping ruptures being extremely low. This provision of the GDC has historically been implemented by the NRC's review and approval of a leak-before-break (LBB) analysis (reference Standard Review Plan Section 3.6.3). Approval of LBB technology for PWRs only was based, in part, on fracture mechanics and the absence of any active degradation mechanisms. This mechanistic rationale for not having to address dynamic effects (i.e., defined and controlled loadings) is still necessary to ensure that piping will not tear unexpectedly, including piping larger than the TBS. Absent an approved LBB analysis for piping larger than the TBS (for plants implementing § 50.46a), PWR licensees would still need to consider dynamic effects because asymmetric blowdown loads could cause fuel rods to bow which could in turn impede control rod insertion. In addition, excluding dynamic effects from consideration for breaks larger than the TBS would permit removal of pipe whip restraints and jet impingement barriers at BWRs. Without pipe whip restraints and jet impingement barriers, a double-ended rupture of the largest pipe in the RCS could result in loss of more than one train of ECCS and could challenge the integrity of the containment. Finally, the dynamic loads associated with a double-ended rupture of the largest pipe in the RCS must be considered to preclude subcompartment pressurization and structural failure of reinforced concrete walls inside the containment that could affect multiple trains in multiple systems. In sum, licensees that voluntarily adopt § 50.46a must continue to comply with GDC 4 and evaluate the dynamic and environmental effects of pipe breaks larger than the TBS, unless a leak-before-break analysis has been approved by the NRC in accordance with GDC 4. Analyses addressing GDC 4, including dynamic effects, approved leak-before-break, and environmental effects, will continue to be part of the design basis of the plant.

As stated in GDC 4, ''dynamic effects associated with postulated pipe ruptures in nuclear power units may be excluded from the design basis when analyses reviewed and approved by the Commission demonstrate that the probability of fluid system piping ruptures is extremely low under conditions consistent with the design basis for the piping.'' Without such an approved analysis, licensees would be required to address the dynamic effects (including the effects of missiles, pipe whipping, and discharging fluids) in their piping system design and analysis. The Commission has not historically required licensees to consider such dynamic effects in performing the ECCS analysis required by § 50.46, containment analysis required by GDC 16 and GDC 50, and probabilistic risk assessments (PRAs). Dynamic effects have been excluded from these analyses because of certain design features (e.g., pipe whip restraints, jet impingement barriers, ECCS train separation) or because of the extremely low likelihood of a double-ended rupture of the largest pipe in the RCS (*i.e.* leak-before-break analysis). This NRC staff position will be maintained for licensees that voluntarily adopt § 50.46a. However, licensees who voluntarily adopt § 50.46a need to consider environmental and dynamic effects in these analyses where non-safety related equipment is credited for mitigating breaks larger than the TBS.

J. Specific Topics Identified for Public Comment

The NRC seeks specific public comments on numerous questions and issues. All specific topics for comment are identified in this section, but some have been discussed elsewhere in this supplementary information.

1. In proposed § 50.46a(b), the Commission specifically precluded the application of the § 50.46a alternative requirements to future reactors. However, future light water reactors might benefit from § 50.46a. The Commission requests specific public comments regarding whether § 50.46a should be made available to future light water reactors.

2. The TBS specified by the NRC in the proposed rule does not include an adjustment to address the effects of seismically-induced LOCAs. NRC is currently performing work to obtain better estimates of the likelihood of seismically-induced LOCAs larger than the TBS. By limiting the extent of degradation of reactor coolant system piping, the likelihood of seismically-induced LOCAs may not affect the basis for selecting the proposed TBS. However, if the results of the ongoing work indicate that seismic events could have a significant effect on overall LOCA frequencies, the NRC may need to develop a new TBS. To facilitate public comment on this issue, a report from this evaluation will be posted on the NRC rulemaking Web site at *http://ruleforum.llnl.gov* before the end of the comment period. In December 2005, stakeholders should periodically check the NRC rulemaking web site for this information. The NRC requests specific public comments on the effects of pipe degradation on seismically-induced LOCA frequencies and the potential for affecting the selection of the TBS. The NRC also requests public comments on the results of the NRC evaluation that will be made available during the comment period. (See Section III.B.3 of this supplementary information.)

3. Depending on the outcome of an ongoing NRC study (see Section III.B.3 of this supplementary information), the final rule could include requirements for licensees to perform plant-specific assessments of seismically-induced pipe breaks. These assessments would need to consider piping degradation that would not be prejudiced by implementation of the licensee's inspection and repair programs. The assessments would have to demonstrate that reactor coolant system piping will withstand earthquakes such that the seismic contribution to the overall frequency of pipe breaks larger than the TBS is insignificant. The NRC requests specific public comments on this and any other potential options and approaches to address this issue.

4. The ACRS noted that ''a better quantitative understanding of the possible benefits of a smaller break size is needed before finalizing the selection of the transition break size.'' The TBS to be included in the final rule should be selected to maximize the potential safety improvements. Thus, the NRC is soliciting comments on the relationship between the size of the TBS and potential safety improvements that might be made possible by reducing the maximum design-basis accident break size.

5. The proposed § 50.46a includes an integrated, risk-informed change process to allow for changes to the facility following reanalysis of beyond design basis LOCAs larger than the TBS. However, the current regulations in 10 CFR Part 50 already have requirements addressing changes to the facility (§ 50.59 and § 50.90). It might be more efficient to include the integrated, risk-informed change (RISP) requirements, for plants that use § 50.46a, under these existing change processes. The Commission solicits specific public comments on whether to revise existing §§ 50.59 and 50.90 to accommodate the requirements for making plant changes under § 50.46a.

6. The proposed § 50.46a rule would rely on risk information. The NRC has included specifically applicable PRA quality and scope requirements in the proposed rule. However, there are other NRC regulations that also rely on risk information (e.g. § 50.65 maintenance rule and § 50.69 alternative special treatment requirements). Consistent with the Commission policy on a phased approach to PRA quality, it might be more efficient and effective to describe PRA requirements (e.g., contents, scope, reporting, changes, etc.), in one location in the regulations so that the PRA requirements would be consistent among all regulations. The NRC is seeking specific public comments on whether it would be better to consolidate all PRA requirements into a single location in the regulations so that they were consistent for all applications or to locate them separately with the specific regulatory applications that they support.

7. The proposed § 50.46a rule would include the requirement that all allowable at-power operating configurations be included in the analysis of LOCAs larger than the TBS and demonstrated to meet the ECCS acceptance criteria. Historically, operational restrictions have not been contained in § 50.46 but were controlled through other requirements (e.g., technical specifications and maintenance rule requirements). It might be more practical to control the availability of equipment credited in the beyond design-basis LOCA analyses in a manner more consistent with other operational restrictions. As a result, the NRC is soliciting public comments on the most effective means for implementing appropriate operational restrictions and controlling equipment availability to ensure that ECCS acceptance criteria are continually met for beyond design-basis LOCAs.

8. Given the Commission's intent (See SRM for SECY–04–0037) that plant changes made possible by this rule should be constrained in areas where the current design requirements ''contribute significantly to the 'built-in capability' of the plant to resist security threats,'' the Commission seeks examples on either side of this threshold (plant changes allowed vs. changes prohibited), and additionally any examples of changes made possible by § 50.46a that could enhance plant security and defense against radiological sabotage or attack. (See Section III.G.2 of this supplementary information.) The Commission also solicits comments on whether the § 50.46a rule should explicitly include a requirement to maintain plant security when making changes under § 50.46a or otherwise rely on a separate rulemaking now being considered by the NRC to more globally address safety and security requirements when making plant changes under §§ 50.59 and 50.90. Any examples of plant changes that involve Safeguards Information should be marked and submitted using the appropriate procedures.

9. Given the potential impact to the licensee (since the backfit rule would not apply) of the NRC's periodic re-evaluation of estimated LOCA frequencies which could cause the NRC to increase the TBS, should the rule require licensees to maintain the capability to bring the plant into compliance with an increased transition break size (TBS), within a reasonable period of time?

10. Is the proposed rule sufficiently clear as to be ''inspectable?'' That is, does the rule language lend itself to timely and objective NRC conclusions regarding whether or not a licensee is in compliance with the rule, given all the facts? In particular, are the proposed requirements for PRA quality sufficient in this regard?

11. The proposed § 50.46a rule would impose no limitations on ''bundling'' of different facility changes together in a single application. Changes which would increase plant risk substantially or create risk outliers could be grouped with other plant changes which would reduce risk so that the net change would meet the risk acceptance criteria. Are the net change in risk acceptance criteria in the proposed rule adequate or should some additional limitations be imposed to avoid allowing facility changes which are known to increase plant risk?

12. Is there an alternative to tracking the cumulative risk increases associated with plant changes made after implementing § 50.46a that is sufficient to provide reasonable assurance of protection to public health and safety and common defense and security? (See Section III.D.1 of this supplementary information.)

13. The Commission requests specific public comments on the acceptability of applying the change in risk acceptance guidelines in RG 1.174 to the total cumulative change in risk from all changes in the plant after adoption of § 50.46a. Should other risk guidelines be used and, if so, what guidelines should be used? (See Section III.D.1.c of this supplementary information.)

14. After approval to implement § 50.46a, the proposed rule would require tracking risk associated with all proposed plant changes but would not require a licensee to include risk increases caused by previous risk-informed changes that were implemented before § 50.46a was adopted. Licensees who adopt § 50.46a before implementing other risk-informed applications will have a smaller risk increase ''available'' compared to licensees who have already incorporated some risk-informed changes into their overall plant risk before adopting § 50.46a. The Commission does not consider this a safety issue but requests specific public comments on whether this potential inconsistency should be addressed and, if so, how? (See Section III.D.1 of this supplementary information.)

15. The proposed § 50.46a would require licensees to report every 24 months all ''minimal'' risk facility changes made under § 50.46a(f)(1) without NRC review. Are there less burdensome or more effective ways of ensuring that the cumulative impact of an unbounded number of ''minimal'' changes remains inconsequential? (See Section III.E.3 of this supplementary information.)

16. Should the § 50.46a rule itself include high-level criteria and requirements for the risk evaluation process and acceptance criteria described in Reg Guide 1.174, as is currently proposed? If these criteria were included in the regulatory guide only, and not in the rule, how could the NRC take enforcement action for licensees who failed to meet the acceptance criteria?

IV. Public Meeting During Development of Proposed Rule

The NRC first prepared a ''conceptual basis'' document and draft rule language indicating the rulemaking approach that was being considered. This conceptual basis was made public on the NRC website on August 2, 2004 (69 FR 46110). The NRC then held a public meeting on August 17, 2004, to inform stakeholders of the rule concept and early draft rule language and to solicit industry stakeholder information about possible plant design changes made possible by the draft rule and their associated costs and benefits. Comments received from stakeholders during the August public meeting are discussed below.

Industry stakeholders asked the NRC to clarify the rule requirements in several areas to allow them to assess the potential costs and benefits of the proposed rule. The NRC has clarified the proposed rule by describing in more detail how the single failure criterion would be applied to ECCS analysis and to other required analyses for pipe breaks larger than the TBS.

Industry stakeholders stated that several GDC other than GDC 35 on ECCS would need to be modified to be consistent with the alternative ECCS requirements in 10 CFR 50.46a. The NRC agrees with this comment and has proposed additional changes to GDC 17, Electrical power systems, GDC 38, Containment heat removal, GDC 41, Containment atmosphere cleanup, GDC 44, Cooling water systems and GDC 50, Containment design basis.

Industry stakeholders asked the NRC (1) to define a threshold for § 50.46a plant changes below which license amendments would not be required, and (2) if the NRC could review and approve a licensee's PRA and process and then allow licensees to make plant changes without further NRC review. The NRC has added language in the proposed rule which allows a licensee to submit a PRA and a plant change evaluation (RISP assessment) process to the NRC for approval. After NRC approval is granted, licensees can make certain plant changes that do not exceed a ''minimal risk'' threshold without further NRC review or approval. Industry stakeholders asked the NRC to address how § 50.46a could be used to increase plant operational flexibility without changing facility design. The NRC intends for licensees to make plant operational changes under § 50.46a using the same processes used to make facility design changes. As noted above, after NRC approval of a licensee's RISP assessment process, licensees are free to make plant operational changes that satisfy the minimal risk change criteria. Any operational changes that do not qualify as minimal risk changes or involve changes to the technical specifications or the license must be submitted to the NRC for review and approval as license amendments.

Industry stakeholders asked if the NRC could reduce the ECCS analytical burden associated with § 50.46a by reducing the number of required analyses or eliminating the need for or reducing the extent of required NRC reviews. The NRC has reviewed the analytical requirements incumbent upon licensees who adopt the 10 CFR 50.46a alternative requirements. In this case, the NRC modified its analysis requirements to be less prescriptive, affording licensees flexibility in demonstrating that the ECCS can successfully mitigate LOCAs up to and including the double-ended rupture of the largest pipe in the RCS. Analysis, documentation and code review requirements are reduced commensurate with the lower likelihood of the larger breaks. Submittal of detailed documentation of licensees' analysis methods used for breaks larger than the TBS is not required, nor is formal NRC approval of analysis methods. The NRC will explicitly define its expectations in the regulatory guide before the final rule is promulgated.

Industry stakeholders asked the NRC to explain its position on the effects of increasing plant power levels on the expert elicitation process for estimating pipe break frequency. The expert elicitation process did not consider potential increases in power. Nevertheless, in determining the TBS, the NRC increased the break size resulting from the expert elicitation process to account for several types of known uncertainties while still maintaining margin for unanticipated uncertainties. These uncertainties are discussed in Section III.B of this supplementary information. While the NRC believes that the proposed rule adequately accounts for modest increases in power, significant power uprates may change plant performance and relevant operating characteristics (e.g., temperature, environment, flow rate, etc.) to a degree which could significantly impact LOCA frequencies. For example, higher temperatures could increase the likelihood of stress corrosion cracking and higher flow rates could increase flow-induced vibration which might accelerate the growth of any pre-existing cracks in the piping. In reviewing applications for power uprates for licensees who comply with § 50.46a, the NRC would determine whether the information provided by the licensee is adequate to ensure that frequencies of LOCAs larger than the TBS are not significantly affected and that adequate performance monitoring programs were implemented under § 50.46a(f)(3)(iii). These performance measurement programs would be required to monitor SSCs commensurate with their safety significance, detect degradation of SSCs before plant safety was compromised, and provide feedback to ensure timely corrective actions. In the longer term, the NRC would continue to assess the precursors that might indicate an increase in pipe break frequencies in plants operating under power uprate conditions to establish whether the TBS would need to be adjusted.

V. Section-by-Section Analysis of Substantive Changes

A. Section 50.34 Contents of Application; Technical Information

Paragraph (a)(4) of this section would clarify that § 50.46a is applicable to reactors whose construction permits were issued before the effective date of the rule and that preliminary safety analysis reports (PSARs) for facilities whose construction permits are issued after the effective date of this rule and design approvals and design certifications issued after the effective date of this rule are not allowed to use § 50.46a.

B. Section 50.46 Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Plants

This section would be modified to allow the optional use of a new § 50.46a containing alternative, risk-informed requirements for emergency core cooling systems for reactors whose operating licenses were issued before the effective date of the rule change.

C. Section 50.46a Alternative Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Reactors

Paragraph (a) would provide definitions for terms used in other parts of this section. Two of the definitions, loss-of-coolant accidents and evaluation model, are based on the existing definitions used in § 50.46 but have been modified to indicate that pipe breaks larger than the TBS are beyond design-basis accidents. The two new definitions are: (1) Transition break size, which is used to distinguish between requirements applicable to pipe breaks at or below this size from those applicable to pipe breaks above this size; and (2) operating configuration, which is used in § 50.46a(d)(2) to specify plant equipment availability conditions that must be analyzed for conformance with acceptance criteria.

Paragraph (b) would provide the applicability and scope of the requirements of this section. Proposed § 50.46a would apply only to the current fleet of licensed light-water nuclear power reactors (licensed before the effective date of the rule). Its requirements would be in addition to any other requirements applicable to ECCS set forth in 10 CFR 50, with the exception of § 50.46.

Paragraph (c) would specify the contents of and acceptance criteria for initial licensee applications for implementing the alternative ECCS requirements in § 50.46a. Paragraph (c)(1)(i) requires that an application contain specific information about the ECCS models and analysis methods to be used by a licensee. Paragraph (c)(1)(ii) requires a description of the RISP assessment process, including (A) a description of the PRA model and other risk assessment methods demonstrating compliance with the risk

assessment quality requirements in § 50.46a(f)(4) & (f)(5) and (B) a description of the methods and decisionmaking process to be used to show compliance with the risk, defense in depth, safety margins and performance measurement criteria specified in § 50.46a(f)(1), (f)(2) and (f)(3). Paragraph (c)(2) would specify that the acceptance criteria that must be met by a licensee before the NRC may approve an application to comply with § 50.46a. Paragraph (c)(2)(i) would specify the ECCS acceptance criteria; paragraph (c)(2)(ii) would require that the RISP assessment processes meets the requirements in § 50.46a(f); and paragraph (c)(2)(iii) would require that the RISP process ensures that plant changes made without NRC review pursuant to § 50.46a(f)(1) are also permitted under § 50.59.

Paragraph (d) would specify the requirements with which licensees approved by the NRC to utilize § 50.46a must comply throughout the operating lifetime of the facility. In paragraph (d)(1), licensees would be required to maintain ECCS evaluation models and analysis methods meeting the requirements in § 50.46a(e)(1) & (e)(2). In paragraph (d)(2), licensees would be required to control plant operation to ensure that for LOCAs larger than the TBS, the ECCS acceptance criteria in § 50.46a(e)(4) would not be exceeded under any allowed at-power operating configuration. In paragraph (d)(3), licensees would be required to ensure that changes to the facility, technical specifications, or procedures are evaluated by an NRC-approved RISP which demonstrates that acceptance criteria in § 50.46a(f) are met. In paragraph (d)(4), licensees would be required to implement a performance-measurement program meeting the requirements in § 50.46a(f)(3)(iii) so that the RISP assessment process reflects actual plant design and operation. In paragraph (d)(5), licensees would be required to update risk assessments to address plant changes and conditions no less often than once every 2 refueling outages. Risk assessments would be required to continue to meet the quality requirements in § 50.46a(f)(4) and (f)(5). Licensees would be required to take action to ensure that facility design and operation continue to be consistent with the risk assessment assumptions used to meet the acceptance criteria in (f)(1) or (f)(2). Any necessary changes to facility caused by updating risk assessments would not be deemed backfitting.

Paragraph (e) would provide the ECCS evaluation requirements and acceptance criteria for the two LOCA break size regions. Paragraph (e)(1) would specify methods for evaluating ECCS cooling performance for breaks at or below the TBS. These requirements are the same as the current requirements for LOCA analyses in existing § 50.46. Paragraph (e)(2) would specify methods for evaluating ECCS cooling performance for breaks larger than the TBS. ECCS cooling performance for LOCA breaks larger than the TBS may be analyzed by realistic methods. Paragraph (e)(3) would provide ECCS acceptance criteria for LOCAs up to and including the TBS. The criteria specified would be equivalent to the current requirements in § 50.46 (e.g., 2200 °F PCT and 17 percent fuel cladding oxidation). Paragraph (e)(4) would provide ECCS acceptance criteria for LOCAs larger than the TBS. These acceptance criteria would be based on coolable geometry and long term cooling and are less prescriptive than the criteria presently used for LOCA analysis. Paragraph (e)(5) would provide that the Director of the Office of Nuclear Reactor Regulation may impose restrictions on reactor operation if ECCS requirements are not met. This paragraph would be added to be consistent with existing § 50.46 which also contains this requirement.

Paragraph (f) would provide requirements for implementing changes to the facility, technical specifications, and procedures under § 50.46a.

Paragraph (f)(1) would specify that licensees may make changes without NRC approval if (i) the changes are permitted under § 50.59 and (ii) a RISP assessment has been performed which demonstrates that any possible increases in risk are minimal and that the criteria in paragraph (f)(3) are met.

Paragraph (f)(2) would state that for plant changes not permitted under paragraph (f)(1), licensees must submit an application for a license amendment containing: (i) the information required by § 50.90; (ii) information from the RISP assessment demonstrating that any increases in CDF and LERF are small, overall plant risk is small, and that the criteria in paragraph (f)(3) are met; and (iii) information demonstrating that the ECCS acceptance criteria in § 50.46a(e)(3) and (e)(4) are met.

Paragraph (f)(3) would specify requirements for all plant changes. Paragraph (f)(3)(i) would require that defense-in-depth is maintained, in part, by assuring that: (A) Reasonable balance is provided among prevention of core damage, containment failure (early and late), and consequence mitigation; (B) system redundancy, independence, and diversity is commensurate with expected frequency of accidents, consequences of those accidents, and uncertainties; and (C) independence of barriers is not degraded. Paragraph (f)(3)(ii) would require that (ii) adequate safety margins are maintained. Paragraph (f)(3)(iii) would require that adequate performance-measurement programs will be implemented that: (A) Detect degradation before plant safety is compromised, (B) provide feedback of information and timely corrective actions, and (C) monitor SSCs commensurate with their safety significance.

Paragraph (f)(4) would provide the quality and scope requirements for risk assessments using PRA. Paragraph (f)(4)(i) would require that the PRA address internal and external events and all plant operating modes that would affect a regulatory decision. Paragraph (f)(4)(ii) would require that the PRA calculate both CDF and LERF. Paragraph (f)(4)(iii) would require that the PRA reasonably represent the current plant configuration and operating practices. Paragraph (f)(4)(iv) would require the PRA to have sufficient technical adequacy and level of detail to be confident that calculated CDF and LERF reflects the actual plant risk.

Paragraph (f)(5) would require licensees using risk assessment methods other than PRA to justify that the methods used produce realistic results.

Paragraph (g) would provide the requirements for making reports to the NRC. Paragraph (g)(1) would require reporting of all errors or changes to ECCS analyses at least annually as specified in § 50.4. For significant changes or errors, licensees would be required to report within 30 days including a schedule for reanalysis or other action as needed to show compliance with ECCS requirements. Under paragraph (g)(1)(i), for LOCAs involving pipe breaks equal to or smaller than the TBS, significant changes would be defined as a change in peak cladding temperature of greater than 50 °F or a change in calculated cladding oxidation that equals or exceeds 0.4 percent oxidation. Under paragraph (g)(1)(ii), for LOCAs involving pipe breaks larger than the TBS, a significant change would be defined as one resulting in a significant reduction in the capability to meet the ECCS acceptance criteria in § 50.46a(e)(4). Paragraph (g)(2) would contain reporting requirements for errors or changes to PRA analyses. Errors or changes that result in a significant reduction in the capability to meet the requirements in § 50.46a(f) would be reported within 60 days of completing a PRA update. Paragraph (g)(3) would contain reporting requirements for plant changes made under § 50.46a(f)(1) involving minimal risk. A short

description of these changes would be reported every 24 months.

Paragraph (h) would provide documentation requirements for plant changes. For all plant changes made under § 50.46a(f), licensees would be required to document the bases for meeting the acceptance criteria in § 50.46a(f)(1) or (f)(2) and (f)(3). These plant changes would also be required to be reflected in updates to the licensee's FSAR.

Paragraphs (i) through (l) would be reserved for future use.

Paragraph (m) would provide that changes made by the NRC to the TBS and all changes required to return the plant to compliance with the acceptance criteria after a change in the TBS are not deemed to be backfitting under 10 CFR 50.109.

D. Section 50.46a Acceptance Criteria for Reactor Coolant System Venting Systems

This section would be redesignated as § 50.46b.

E. Section 50.109 Backfitting

This section would be modified to provide that changes made by the NRC to the TBS and changes made by licensees to continue to comply with are not deemed to be backfitting under 10 CFR 50.109.

F. Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

Five of the general design criteria contained in Appendix A would be modified to remove the requirement to assume a single failure and a loss-of-offsite power in the systems subject to these criteria for pipe breaks larger than the TBS up to and including the DEGB of the largest RCS pipe for those plants implementing § 50.46a. The specific criteria are: GDC 17, Electrical power systems, GDC 35, Emergency core cooling, GDC 38, Containment heat removal, GDC 41, Containment atmosphere cleanup, and GDC 44, Cooling water systems. General Design Criterion 50, Containment design basis, would also be modified to specify that for plants under § 50.46a, leak tight containment capability should maintained for ''realistically'' calculated temperatures and pressures for LOCAs larger than the TBS.

VI. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), as amended, the Commission is issuing the proposed rule to amend § 50.46, add § 50.46a and redesignate existing § 50.46a and § 50.46b under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties, as they apply to regulations in Part 50 are discussed in § 50.111.

VII. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517, September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VIII. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Website (Web). The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (PERR). The NRC's public electronic reading room is located at *www.nrc.gov/reading-rm.html.*

Document	PDR	Web	PERR
Conceptual basis and draft rule	X	X	ML042160503
WOG comment letter	X	.....	ML042680079
NEI comment letter	X	.....	ML042680080
BWROG comment letter	X	.....	ML042680077
SRM of March 31, 2003	X	X	ML030910476
SECY–02–0057	X	X	ML020660607
SECY–98–300	X	X	ML992870048
SECY–04–0037	X	X	ML040490133
SRM of July 1, 2004	X	X	ML041830412
RG 1.174	X	X	ML023240437
Petition for Rulemaking 50–75	X	X	ML020630082
SECY–04–0060	X	X	ML040860129
NUREG–0933	X	X	ML042540049
Regulatory Analysis	X	.....	ML052870368
SECY–05–0052	X	X	ML050480155
SRM of July 29, 2005	X	X	ML052100416
NUREG 1829	X	X	ML052010464

IX. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and reflectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent

with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to use the following Government-unique standard: 10 CFR 50.46a. The Commission notes the development of voluntary consensus standards on PRAs, such as an ASME Standard on Probabilistic Risk Assessment for Nuclear Power Plant Applications. The government standards would allow the use of voluntary consensus standards, but would not require their use. The Commission does not believe that these other standards are sufficient to specify the necessary requirements for licensees who wish to modify plant ECCS analysis methods and nuclear power reactor designs based on the results of probabilistic risk analysis. The NRC is not aware of any voluntary consensus standard addressing risk-informed ECCS design and consequent changes in a light-water power reactor facility, technical specifications, or procedures that could be used instead of the proposed Government-unique standard. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain how the voluntary consensus standard is comparable and why it should be used instead of the proposed Government-unique standard.

XI. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is as follows:

This action stems from the Commission's ongoing efforts to risk-inform its regulations. If adopted, the proposed rule would establish a voluntary alternative set of risk-informed requirements for emergency core cooling systems. Using the alternative ECCS requirements [14] will provide some licensees with opportunities to change other aspects of plant design to increase safety, increase operational flexibility or decrease costs. Accordingly, licensee actions taken under the proposed rule could either decrease the probability of an accident or slightly increase the probability of an accident. Mitigation of LOCAs of all sizes would still be required but with less redundancy and margin for the larger, low probability breaks. Increases in risk, if any, would be required to be small enough that adequate assurance of public health and safety is maintained. When considered together, the net effect of the licensee actions is expected to have a negligible effect on accident probability.

Thus, the proposed action would not significantly increase the probability or consequences of an accident, when considered in a risk-informed manner. No changes would be made in the types of quantities of radiological effluents that may be released offsite, and there is no significant increase in public radiation exposure since there is no change to facility operations that could create a new or significantly affect a previously analyzed accident or release path.

With regard to non-radiological impacts, no changes would be made to non-radiological plant effluents and there would be no changes in activities that would adversely affect the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

The primary alternative would be the no action alternative. The no action alternative, at worst, would result in no changes to current levels of safety, risk, or environmental impact. The no action alternative would also prevent licensees from making certain plant modifications that could be implemented under the proposed rule that could increase plant safety. The no action alternative would also continue existing regulatory burdens for which there may be little or no safety, risk, or environmental benefit.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation on this assessment. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XII. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR Part 50, ''Risk-Informed Changes to Loss-Of-Coolant Accident Technical Requirements''.

The form number if applicable: Not applicable.

How often the collection is required: One-time submission of a risk assessment of ECCS performance, submission of PRAs and corrective actions on occasion, ongoing recordkeeping.

Who will be required or asked to report: Licensees authorized to operate a nuclear power reactor that choose to implement the risk-informed alternative for analyzing the performance of emergency core cooling systems during loss-of-coolant accidents.

An estimate of the number of annual responses: 46.

The estimated number of annual respondents: 23.

An estimate of the total number of hours needed annually to complete the requirement or request: 324,208 hours total, including 268,640 hours for reporting (an average of 11,680 hours per respondent) + 55,568 hours recordkeeping (an average of 2,416 hours per recordkeeper).

Abstract: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to permit current power reactor licensees to implement a voluntary, risk-informed alternative to the current requirements for analyzing the performance of emergency core cooling systems (ECCS) during loss-of-coolant accidents (LOCAs). In addition, the proposed rule would establish procedures and criteria for making changes in plant design and procedures based upon the results of the new analyses of ECCS performance during LOCAs.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

[14] The alternative requirements are less stringent in the area of large break LOCAs. The NRC believes that large break LOCAs are very rare events; hence requiring reactors to conservatively withstand such events focuses attention and resources on extremely unlikely events and could have a detrimental effect on mitigating accidents initiated by other more likely events.

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O 1F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov*.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by December 7, 2005, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail your comments to John A. *Asalone@omb.eop.gov* or comment by telephone at (202) 395–4650.

Public Protection Notification

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

XIII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Availability of the regulatory analysis is provided in Section VIII. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XIV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XV. Backfit Analysis

The NRC has determined that the proposed rulemaking generally does not constitute backfitting as defined in the Backfit Rule, 10 CFR 50.109(a)(1), and that three provisions of the proposed rule effectively excluding certain actions from the purview of the Backfit Rule, viz., § 50.109(b)(2); § 50.46a(f)(5), and § 50.46a(j), are appropriate. The bases for each of these determinations follows.

The NRC has determined that the proposed rulemaking does not constitute backfitting because it provides a voluntary alternative to the existing requirements in 10 CFR 50.46 for evaluating the performance of an ECCS for light-water nuclear power plants. A licensee may decide to either comply with the requirements of § 50.46a, or to continue to comply with the existing licensing basis of their plant with respect to ECCS analyses. Therefore, the Backfit Rule does not require the preparation of a backfit analysis for the proposed rule.

As discussed in Section III.H, ''Potential Revisions Based on LOCA Frequency Reevaluations,'' the Commission may undertake future rulemaking to revise the TBS based upon re-evaluations of LOCA frequencies occurring after the effective date of a final rule. A proposed amendment to the Backfit Rule, § 50.109(b)(2), would provide that future changes to the TBS would not be subject to the Backfit Rule. The Commission has determined that there is no statutory bar to the adoption of such a provision. The Commission also believes that the proposed exclusion of such rulemakings from the Backfit Rule is appropriate. The Commission intends to revise the TBS in § 50.46a rarely and only if necessary based upon public health and safety and/or common defense and security considerations. The Commission also does not regard the proposed exclusion as allowing the Commission to adopt cost-unjustified changes to the TBS. The NRC prepares a regulatory analysis for each substantive regulatory action which identifies the regulatory objectives of the proposed action, and evaluates the costs and benefits of proposed alternatives for achieving those regulatory objectives. The Commission has also adopted guidelines governing treatment of individual requirements in a regulatory analysis (69 FR 29187; May 21, 2004). The Commission believes that a regulatory analysis performed in accordance with these guidelines will be effective in identifying unjustified regulatory proposals. In addition, such rulemaking as applied to licensees who have not yet transferred to § 50.46a would not constitute backfitting for those licensees, inasmuch as the Backfit Rule does not protect a future applicant who has no reasonable expectation that requirements will remain static. The policies underlying the Backfit Rule apply only to licensees who have already received regulatory approval. Accordingly, the Commission concludes that the proposed exclusion in § 50.109(b)(2) of future changes to the TBS from the requirements of the Backfit Rule is appropriate.

As discussed in Section III.D.3.e, § 50.46a(d)(5) would require that a PRA used to demonstrate compliance with the risk acceptance criteria in § 50.46a(f)(1) or (f)(2) be periodically re-evaluated and updated, and that the licensee implement changes to the facility and procedures as necessary to ensure that the acceptance criteria continue to be met. To ensure that such re-evaluation and updating of the PRA and any necessary changes to a facility and its procedures under paragraph (d)(5) are not considered backfitting, § 50.46a(d)(5) would provide that such re-evaluation, updating, and changes are not deemed to be backfitting. The Commission believes that this exclusion from the Backfit Rule is appropriate, inasmuch as application of the Backfit Rule in this context would effectively favor increases in risk. This is because most facility and procedure changes involve an up-front cost to implement a change which must be recovered over the remaining operating life of the facility in order to be considered cost-effective. For example, assume that after a change is implemented, subsequent PRA analyses suggest that the change should be ''rescinded'' (either the hardware is restored to the original configuration or the new configuration is not credited in design bases analyses) in order to maintain the assumed risk level. The cost/benefit determination of the second, ''restoring'' change must address: (i) The unrecovered cost of the first change; and (ii) the cost of the second, ''restoring'' change. In most cases, application of cost/benefit

analyses in evaluating the second, ''restoring'' change would skew the decision-making in favor of accepting the existing plant with the higher risk. Accumulation of such incremental increases in risk does not appear to be an appropriate regulatory approach. Accordingly, the Commission concludes that the backfitting exclusion in § 50.46a(d)(5) is appropriate.

Section 50.46a(m) would provide that if the NRC changes the TBS specified in § 50.46a, licensees who have evaluated their ECCS under § 50.46a shall undertake additional actions to ensure that the relevant acceptance criteria for ECCS performance are met with the new TBSs, and that such licensee actions are not to be considered backfitting. Consequently, the NRC may require licensees to take action under § 50.46a(m) without consideration of the Backfit Rule. The Commission has determined that there is no statutory bar to the adoption of this provision, and that the proposed provision represents a justified departure from the principles underlying the Backfit Rule. First, the Commission's decision on this matter recognizes that any future rulemaking to alter the TBS will require preparation of a regulatory analysis. As discussed, the regulatory analysis will ordinarily include a cost/benefit analysis addressing whether the costs of the TBS redefinition are justified in view of the benefits attributable to the redefinition. Second, the licensee has substantial flexibility under the proposed rule to determine the actions (reanalysis, procedure and operational changes, design-related changes, or a combination thereof) necessary to demonstrate compliance with the relevant ECCS acceptance criteria. In this sense, the performance-based approach of the proposed rule lends substantial flexibility to the licensee and may tend to reduce the burden associated with changes in the TBS. Accordingly, the Commission concludes that the backfitting exclusion in § 50.46a(m) is appropriate.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.34, paragraphs (a)(4) and (b)(4) are revised to read as follows:

§ 50.34 Contents of application; technical information.

(a) * * *

(4) A preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high point vents following postulated loss-of-coolant accidents must be performed in accordance with the requirements of § 50.46 or § 50.46a, and § 50.46b for facilities for which construction permits may be issued after December 28, 1974, but before [EFFECTIVE DATE OF RULE]. Such analyses must be performed in accordance with the requirements of § 50.46 and § 50.46b for facilities for which construction permits may be issued after [EFFECTIVE DATE OF RULE], and design approvals and standard design certifications under part 52 of this chapter issued after [EFFECTIVE DATE OF RULE].

* * * * *

(b) * * *

(4) A final analysis and evaluation of the design and performance of structures, systems, and components with the objective stated in paragraph (a)(4) of this section and taking into account any pertinent information developed since the submittal of the preliminary safety analysis report. Analysis and evaluation of ECCS cooling performance following postulated LOCAs must be performed in accordance with the requirements of §§ 50.46 or 50.46a, and 50.46b for facilities for which a license to operate may be issued after December 28, 1974, but before [EFFECTIVE DATE OF RULE]. The analyses must be performed in accordance with the requirements of §§ 50.46 and 50.46b for facilities for which construction permits may be issued after [EFFECTIVE DATE OF RULE], and design approvals and standard design certifications under part 52 of this chapter issued after [EFFECTIVE DATE OF RULE].

* * * * *

3. In § 50.46, paragraph (a) introductory text is added and paragraph (a)(1)(i) is revised to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light-water nuclear power plants.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircalloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS). Reactors whose operating licenses were issued before [EFFECTIVE DATE OF RULE] must be designed in accordance with the requirements of either this section or § 50.46a. Reactors whose construction permits were issued prior to, but have not received operating licenses as of [EFFECTIVE DATE OF RULE], and those reactors whose construction permits are issued after [EFFECTIVE DATE OF RULE] must be designed in accordance with this section.

(1)(i) The ECCS system must be designed so that its calculated cooling performance following postulated LOCAs conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated

in accordance with an acceptable evaluation model and must be calculated for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs are calculated. Except as provided in paragraph (a)(1)(ii) of this section, the evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a LOCA. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II *Required Documentation*, sets forth the documentation requirements for each evaluation model. This section does not apply to a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted.

* * * * *

4. Section 50.46a is redesignated as § 50.46b.

5. A new § 50.46a is added to read as follows:

§ 50.46a Alternative acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.

(a) *Definitions.* For the purposes of this section:

(1) *Evaluation model* means the calculational framework for evaluating the behavior of the reactor system during a postulated design-basis loss-of-coolant accident (LOCA). It includes one or more computer programs and all other information necessary for application of the calculational framework to a specific LOCA, such as mathematical models used, assumptions included in the programs, procedure for treating the program input and output information, specification of those portions of analysis not included in computer programs, values of parameters, and all other information necessary to specify the calculational procedure.

(2) *Loss-of-coolant accidents (LOCAs)* means the hypothetical accidents that would result from the loss of reactor coolant, at a rate in excess of the capability of the reactor coolant makeup system, from breaks in pipes in the reactor coolant pressure boundary up to and including a break equivalent in size to the double-ended rupture of the largest pipe in the reactor coolant system. LOCAs involving breaks at or below the transition break size (TBS) are considered design-basis accidents. LOCAs involving breaks larger than the TBS are considered beyond design-basis accidents.

(3) *Operating configuration* means those plant characteristics, such as power level, equipment unavailability (including unavailability caused by corrective and preventive maintenance), and equipment capability that affect plant response to a LOCA.

(4) *Transition break size (TBS)* is a break of area equal to the cross-sectional flow area of the inside diameter of specified piping for a specific reactor. The specified piping for a pressurized water reactor is the largest piping attached to the reactor coolant system. The specified piping for a boiling water reactor is the larger of the feedwater line inside containment or the residual heat removal line inside containment.

(b) *Applicability and scope.* (1) The requirements of this section apply to each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircalloy or ZIRLO cladding for which a license to operate was issued prior to [EFFECTIVE DATE OF RULE], but do not apply to such a reactor for which the certification required under § 50.82(a)(1) has been submitted.

(2) The requirements of this section are in addition to any other requirements applicable to ECCS set forth in this part, with the exception of § 50.46. The criteria set forth in paragraphs (e)(3) and (e)(4) of this section, with cooling performance calculated in accordance with an acceptable evaluation model or analysis method under paragraphs (e)(1) and (e)(2) of this section, are in implementation of the general requirements with respect to ECCS cooling performance design set forth in this part, including in particular Criterion 35 of Appendix A to this part.

(c) *Application.* (1) A licensee voluntarily choosing to implement this section shall submit an application for a license amendment under § 50.90 that contains the following information:

(i) A description of the method(s) for demonstrating compliance with the ECCS criteria in paragraph (e) of this section;

(ii) A description of the risk-informed integrated safety performance (RISP) assessment process to be used in evaluating whether proposed changes to the facility, technical specifications, or procedures meet the requirements in paragraph (f) of this section; including:

(A) a description of the licensee's PRA model and non-PRA risk assessment methods demonstrating compliance with paragraphs (f)(4) and (f)(5) of this section, and

(B) a description of the methods and decisionmaking process for evaluating compliance with the risk criteria, defense-in-depth criteria, safety margin criteria, and performance measurement criteria.

(2) *Acceptance criteria.* The Commission may approve an application to use this section if:

(i) The method(s) for demonstrating compliance with the ECCS acceptance criteria in paragraphs (e)(3) and (e)(4) of this section meet the requirements in paragraphs (e)(1) and (e)(2);

(ii) The RISP assessment process (including any PRA model and other risk assessment methods) meets the requirements in paragraph (f) of this section; and

(iii) The RISP assessment process ensures that changes made pursuant to paragraph (f)(1) are permitted under § 50.59.

(d) *Requirements during operation.* A licensee whose application under paragraph (c) of this section is approved by the NRC shall comply with the following requirements until the licensee submits the certifications required by § 50.82(a):

(1) The licensee shall maintain ECCS model(s) and/or analysis method(s) meeting the acceptance requirements in paragraphs (e)(1) and (e)(2) of this section,

(2) For LOCAs larger than the TBS, the acceptance criteria in paragraph (e)(4) shall not be exceeded under any allowed at-power operating configurations analyzed under paragraph (e), and the plant may not be placed in any at-power operating configuration not addressed under paragraph (e) of this section.

(3) The licensee shall evaluate any change to the facility as described in the FSAR, technical specifications, or procedures using the NRC-approved RISP assessment process and shall demonstrate that the acceptance criteria in paragraph (f) of this section are met.

(4) The licensee shall implement adequate performance-measurement programs to ensure that the RISP assessment process reflects actual plant design and operation. These programs must meet the criteria in paragraph (f)(3)(iii) of this section.

(5) The licensee shall periodically re-evaluate and update its risk assessments required under paragraph (c)(1)(ii) of this section to address changes to the

plant, operational practices, equipment performance, plant operational experience, and PRA model, and revisions in analysis methods, model scope, data, and modeling assumptions. The re-evaluation and updating must be completed in a timely manner, but no less often than once every two refueling outages. The updated risk assessments must continue to meet the requirements in paragraphs (f)(4) and (f)(5) of this section. Based upon the risk assessments, the licensee shall take appropriate action to ensure that facility design and operation continue to be consistent with the risk assessment assumptions used to meet the acceptance criteria in paragraphs (f)(1) or (f)(2) of this section, as applicable. The re-evaluation and updating required by this section, and any necessary changes to the facility, technical specifications and procedures as a result of this re-evaluation and updating, shall not be deemed to be backfitting under any provision of this chapter.

(e) *ECCS Performance.* Each nuclear power reactor subject to this section must be provided with an ECCS that must be designed so that its ECCS calculated cooling performance following postulated LOCAs conforms to the criteria set forth in this section. The evaluation models for LOCAs involving breaks at or below the TBS must meet the criteria in this paragraph, and must be approved for use by the NRC. Appendix K, Part II, 10 CFR Part 50, sets forth the documentation requirements for evaluation models for LOCAs involving breaks at or below the TBS. The analysis methods for LOCAs involving breaks larger than the TBS must be maintained, available for inspection, and include the analytical approaches, equations, approximations and assumptions.

(1) *ECCS evaluation for LOCAs involving breaks at or below the TBS.* ECCS cooling performance at or below the TBS must be calculated in accordance with an evaluation model that meets the requirements of either section I to Appendix K of this part, or the following requirements, and demonstrate that the acceptance criteria in paragraph (e)(3) of this section are satisfied. The evaluation model must be used for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs involving breaks at or below the TBS are analyzed. The evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a LOCA. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (e)(3) of this section, there is a high level of probability that the criteria would not be exceeded.

(2) *ECCS analyses for LOCAs involving breaks larger than the TBS.* ECCS cooling performance for LOCAs involving breaks larger than the TBS must be calculated and must demonstrate that the acceptance criteria in paragraph (e)(4) of this section are satisfied. The analysis method must address the most important phenomena in analyzing the course of the accident. The evaluation must be performed for a number of postulated LOCAs of different sizes and locations sufficient to provide assurance that the most severe postulated LOCAs larger than the TBS up to the double-ended rupture of the largest pipe in the reactor coolant system are analyzed. Sufficient supporting justification, including the methodology used, must be available to show that the analytical technique reasonably describes the behavior of the reactor system during a LOCA from the TBS up to the double-ended rupture of the largest reactor coolant system pipe. Comparisons to applicable experimental data must be made. These calculations may take credit for the availability of offsite power and do not require the assumption of a single failure. Realistic initial conditions and availability of equipment may be assumed if supported by plant-specific data or analysis.

(3) *Acceptance criteria for LOCAs involving breaks at or below the TBS.* The following acceptance criteria must be used in determining the acceptability of ECCS cooling performance:

(i) *Peak cladding temperature.* The calculated maximum fuel element cladding temperature must not exceed 2200 °F.

(ii) *Maximum cladding oxidation.* The calculated total oxidation of the cladding must not at any location exceed 0.17 times the total cladding thickness before oxidation. As used in this paragraph, total oxidation means the total thickness of cladding metal that would be locally converted to oxide if all the oxygen absorbed by and reacted with the cladding locally were converted to stoichiometric zirconium dioxide. If cladding rupture is calculated to occur, the inside surfaces of the cladding must be included in the oxidation, beginning at the calculated time of rupture. Cladding thickness before oxidation means the radial distance from inside to outside the cladding, after any calculated rupture or swelling has occurred but before significant oxidation. Where the calculated conditions of transient pressure and temperature lead to a prediction of cladding swelling, with or without cladding rupture, the unoxidized cladding thickness must be defined as the cladding cross-sectional area, taken at a horizontal plane at the elevation of the rupture, if it occurs, or at the elevation of the highest cladding temperature if no rupture is calculated to occur, divided by the average circumference at that elevation. For ruptured cladding the circumference does not include the rupture opening.

(iii) *Maximum hydrogen generation.* The calculated total amount of hydrogen generated from the chemical reaction of the cladding with water or steam must not exceed 0.01 times the hypothetical amount that would be generated if all of the metal in the cladding cylinders surrounding the fuel, excluding the cladding surrounding the plenum volume, were to react.

(iv) *Coolable geometry.* Calculated changes in core geometry must be such that the core remains amenable to cooling.

(v) *Long term cooling.* After any calculated successful initial operation of the ECCS, the calculated core temperature must be maintained at an acceptably low value and decay heat must be removed for the extended period of time required by the long-lived radioactivity remaining in the core.

(4) *Acceptance criteria for LOCAs involving breaks larger than the TBS.* The following acceptance criteria must be used in determining the acceptability of ECCS cooling performance:

(i) *Coolable geometry.* Calculated changes in core geometry must be such that the core remains amenable to cooling.

(ii) *Long term cooling.* After any calculated successful initial operation of the ECCS, the calculated core temperature must be maintained at an acceptably low value and decay heat must be removed for the extended period of time required by the long-lived radioactivity remaining in the core.

(5) *Imposition of restrictions.* The Director of the Office of Nuclear Reactor Regulation may impose restrictions on reactor operation if it is found that the evaluations of ECCS cooling performance submitted are not consistent with paragraph (e) of this section.

(f) *Changes to facility, technical specifications, or procedures.* A licensee who wishes to make changes to the facility or procedures or to the technical specifications shall perform a RISP assessment.

(1) The licensee may make such changes without prior NRC approval if:

(i) The change is permitted under § 50.59, and

(ii) The RISP assessment demonstrates that any increases in the estimated risk are minimal compared to the overall plant risk profile, and the criteria in paragraph (f)(3) of this section are met.

(2) For implementing changes which are not permitted under paragraph (f)(1) of this section, the licensee must submit an application for license amendment under § 50.90. The application must contain:

(i) The information required under § 50.90;

(ii) Information from the RISP assessment demonstrating that the total increases in core damage frequency and large early release frequency are small and the overall risk remains small, and the criteria in paragraph (f)(3) of this section are met; and

(iii) Information demonstrating that the criteria in paragraphs (e)(3) and (e)(4) of this section are met.

(3) All changes to a facility or procedures or to the technical specifications must meet the following criteria:

(i) Defense in depth is maintained, in part, by assuring that:

(A) Reasonable balance is provided among prevention of core damage, containment failure (early and late), and consequence mitigation;

(B) System redundancy, independence, and diversity are provided commensurate with the expected frequency of postulated accidents, the consequences of those accidents, and uncertainties; and

(C) Independence of barriers is not degraded;

(ii) Adequate safety margins are retained to account for uncertainties; and

(iii) Adequate performance-measurement programs are implemented to ensure the RISP assessment continues to reflect actual plant design and operation. These programs shall be designed to:

(A) Detect degradation of the system, structure or component before plant safety is compromised,

(B) Provide feedback of information and timely corrective actions, and

(C) Monitor systems, structures or components at a level commensurate with their safety significance.

(4) *Requirements for risk assessment—PRA.* To the extent that a PRA is used in the RISP assessment, the PRA must:

(i) Address initiating events from sources both internal and external to the plant and for all modes of operation, including low power and shutdown modes, that would affect the regulatory decision in a substantial manner;

(ii) Calculate CDF and LERF;

(iii) Reasonably represent the current configuration and operating practices at the plant; and

(iv) Have sufficient technical adequacy (including consideration of uncertainty) and level of detail to provide confidence that the total CDF and LERF and the change in total CDF and LERF adequately reflect the plant and the effect of the proposed change on risk.

(5) *Requirements for risk assessment other than PRA.* To the extent that risk assessment methods other than PRAs are used to develop quantitative or qualitative estimates of changes to CDF and LERF in the RISP assessment, a licensee shall justify that the methods used produce realistic results.

(g) *Reporting.* (1) Each licensee shall estimate the effect of any change to or error in evaluation models or analysis methods or in the application of such models or methods to determine if the change or error is significant. For each change to or error discovered in an ECCS evaluation model or analysis method or in the application of such a model that affects the calculated results, the licensee shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission at least annually as specified in § 50.4. If the change or error is significant, the licensee shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking other action as may be needed to show compliance with § 50.46a requirements. This schedule may be developed using an integrated scheduling system previously approved for the facility by the NRC. For those facilities not using an NRC-approved integrated scheduling system, a schedule will be established by the NRC staff within 60 days of receipt of the proposed schedule. Any change or error correction that results in a calculated ECCS performance that does not conform to the criteria set forth in paragraphs (e)(3) or (e)(4) of this section is a reportable event as described in §§ 50.55(e), 50.72 and 50.73. The licensee shall propose immediate steps to demonstrate compliance or bring plant design or operation into compliance with § 50.46a requirements. For the purpose of this paragraph, a significant change or error is:

(i) For LOCAs involving pipe breaks at or below the TBS, one which results either in a calculated peak fuel cladding temperature different by more than 50 °F from the temperature calculated for the limiting transient using the last acceptable model, or is a cumulation of changes and errors such that the sum of the absolute magnitudes of the respective temperature changes is greater than 50 °F; or a change in the calculated oxidation, or the sum of the absolute value of the changes in calculated oxidation, equals or exceeds 0.4 percent oxidation; or

(ii) For LOCAs involving pipe breaks larger than the TBS, one which results in a significant reduction in the capability to meet the requirements of paragraph (e)(4) of this section.

(2) As part of the PRA update under paragraph (d)(5) of this section, the licensee shall report the change to the NRC if the change results in a significant reduction in the capability to meet the requirements in paragraph (f) of this section. The report must be filed with the NRC no more than 60 days after completing the PRA update and must include a description of the relevant PRA updates performed by the licensee, an explanation of the changes in the PRA modeling, plant design, or plant operation that led to the increase(s) in CDF or LERF after completing the PRA update, a description of any corrective actions required under paragraph (d)(5) of this section, and a schedule for implementation.

(3) Every 24 months, the licensee shall submit, as specified in § 50.4, a short description of all changes involving minimal changes in risk made under paragraph (f)(1) of this section since the last report.

(h) *Documentation of changes to facility, technical specification, and procedures.* When making changes under paragraph (f) of this section, the licensee shall document the bases for demonstrating compliance with the acceptance criteria in paragraphs (f)(1) or (f)(2) and (f)(3) of this section. Upon the approval of the change under paragraph (f)(2) of this section or licensee implementation of the change under paragraph (f)(1) of this section, the licensee shall update the final safety analysis report in accordance with § 50.71(e).

(i) through (l)—[RESERVED]

(m) *Changes to TBS.* If the NRC increases the TBS specified in this section applicable to a licensee's nuclear power plant, each licensee subject to this section shall perform the

evaluations required by paragraphs (e)(1) and (e)(2) of this section and reconfirm compliance with the acceptance criteria in paragraphs (e)(3) and (e)(4) of this section. If the licensee cannot demonstrate compliance with the acceptance criteria, then the licensee shall change its facility, technical specifications or procedures so that the acceptance criteria are met. The evaluation required by this paragraph, and any necessary changes to the facility, technical specifications or procedures as the result of this evaluation, must not be deemed to be backfitting under any provision of this chapter.

6. In § 50.109, paragraph (b) is revised to read as follows:

§ 50.109 Backfitting.

* * * * *

(b) Paragraph (a)(3) of this section shall not apply to:

(1) Backfits imposed prior to October 21, 1985; and

(2) Any changes made to the TBS specified in § 50.46a or as otherwise applied to a licensee.

* * * * *

7. In Appendix A to 10 CFR Part 50, under the heading, ''CRITERIA,'' Criterion 17, 35, 38, 41, 44 and 50 are revised to read as follows:

Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

* * * * *

Criteria

* * * * *

Criterion 17—Electrical power systems. An on-site electric power system and an offsite electric power system shall be provided to permit functioning of structures, systems, and components important to safety. The safety function for each system (assuming the other system is not functioning) shall be to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

The onsite electric power supplies, including the batteries, and the onsite electrical distribution system, shall have sufficient independence, redundancy and testability to perform their safety functions assuming a single failure, except for loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a, where a single failure of the onsite power supplies and electrical distribution system need not be assumed for plants under § 50.46a.

Electric power from the transmission network to the onsite electric distribution system shall be supplied by two physically independent circuits (not necessarily on separate rights of way) designed and located so as to minimize to the extent practical the likelihood of their simultaneous failure under operating and postulated accident conditions. A switchyard common to both circuits is acceptable. Each of these circuits shall be designed to be available in sufficient time following a loss of all onsite alternating current power supplies and the other offsite electric power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. One of these circuits shall be designed to be available within a few seconds following a LOCA to assure that core cooling, containment integrity, and other vital safety functions are maintained.

Provisions shall be included to minimize the probability of losing electric power from any of the remaining supplies as a result of, or coincident with, the loss of power generated by the nuclear power unit, the loss of power from the transmission network, or the loss of power from the onsite electric power supplies.

* * * * *

Criterion 35—Emergency core cooling. A system to provide abundant emergency core cooling shall be provided. The system safety function shall be to transfer heat from the reactor core following any loss of reactor coolant at a rate such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented and (2) clad metal-water reaction is limited to negligible amounts.

Suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure, except for loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a. For those accidents, a single failure need not be assumed and the unavailability of offsite power need not be assumed for onsite electric power system operation.

* * * * *

Criterion 38—Containment heat removal. A system to remove heat from the reactor containment shall be provided. The system safety function shall be to reduce rapidly, consistent with the functioning of other associated systems, the containment pressure and temperature following any LOCA and maintain them at acceptably low levels.

Suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure, except for analysis of loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a, where a single failure and the unavailability of offsite power need not be assumed.

* * * * *

Criterion 41—Containment atmosphere cleanup. Systems to control fission products, hydrogen, oxygen, and other substances which may be released into the reactor containment shall be provided as necessary to reduce, consistent with the functioning of other associated systems, the concentration and quality of fission products released to the environment following postulated accidents, and to control the concentration of hydrogen or oxygen and other substances in the containment atmosphere following postulated accidents to assure that containment integrity is maintained.

Each system shall have suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) its safety function can be accomplished, assuming a single failure, except for analysis of loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a, where a single failure and the unavailability of offsite power need not be assumed.

* * * * *

Criterion 44—Cooling water. A system to transfer heat from structures, systems, and components important to safety, to an ultimate heat sink shall be provided. The system safety function shall be to transfer the combined heat load of these structures, systems, and components under normal operating and accident conditions.

Suitable redundancy in components and features, and suitable interconnections, leak detection, and isolation capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure, except for analysis of loss of coolant accidents involving pipe breaks larger than the transition break size under § 50.46a, where a single failure and the unavailability of offsite power need not be assumed.

* * * * *

Criterion 50—Containment design basis. The reactor containment structure, including access openings, penetrations, and the containment heat removal system shall be designed so that the containment structure and its internal compartments can accommodate, without exceeding the design leakage rate and with sufficient margin, the calculated pressure and temperature conditions resulting from any loss-of-coolant accident. This margin shall reflect consideration of (1) the effects of potential energy sources which have not been included in the determination of the peak conditions, such as energy in steam generators and as required by § 50.44 energy from metal-water and other chemical reactions that may result from degradation but not total failure of

emergency core cooling functioning, (2) the limited experience and experimental data available for defining accident phenomena and containment responses, and (3) the conservatism of the calculational model and input parameters.

For licensees voluntarily choosing to comply with § 50.46a, the structural and leak tight integrity of the reactor containment structure, including access openings, penetrations, and its internal compartments, shall be maintained for realistically calculated pressure and temperature conditions resulting from any loss of coolant accident larger than the transition break size.

* * * * *

Dated at Rockville, Maryland, this 28th day of October, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E5–6090 Filed 11–4–05; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Monday,
November 7, 2005

Part V

Department of Labor

Mine Safety and Health Administration
30 CFR Parts 5, 15, 18, et al.
Fees for Testing, Evaluation, and Approval of Mining Products; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219–AB38

30 CFR Parts 5, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36

Fees for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On August 9, 2005, we issued a direct final rule amending our regulations to reflect changes in policies and procedures for administering fees for testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry. The direct final rule had an effective date of November 7, 2005, provided we did not receive significant adverse comments. Concurrent with the direct final rule's publication in the **Federal Register**, we published a separate, identical proposed rule to speed notice and comment rulemaking in the event we received significant adverse comments which required the withdrawal of the direct final rule.

One interested party submitted a comment to us regarding this rulemaking. The comment raises an issue beyond the scope of the rulemaking, and we do not consider the comment to be a ''significant adverse comment.'' Therefore, this notice confirms the effective date of the direct final rule.

DATES: The direct final rule (Fees for Testing, Evaluation, and Approval of Mining Products (70 FR 46336) published August 9, 2005) is effective November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Blvd., Room 2302, Arlington, Virginia 22209–3939, 202–693–9440 (telephone), 202–693–9441 (telefax), or *smith.rebecca@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Direct Final Rule

On August 9, 2005, we published a direct final rule (70 FR 46336) amending our regulations to reflect established policies and procedures relating to testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry.

Since our initial implementation of part 5, changes to agency policies and procedures have significantly increased the efficiency of the approval process and the administration of the fee program. In particular, we have eliminated the application fee, allowed applicants to pre-authorize expenditures, and restructured existing programs for expediting requests for changes to previously approved mining products. The direct final rule updates part 5 to reflect these initiatives and makes corresponding changes throughout parts 15 through 36. The primary purpose of the direct final rule was to address fee calculation and administration to cover the cost of Approval and Certification Center services including ''approvals'' as explained in the direct final rule's preamble 70 FR 46336–46337.

Additionally, the rule removes references in parts 5, 15, and 33 to the Department of the Interior's former Bureau of Mines (BOM), which was dissolved in 1996 (Pub. L. 104–99). Prior to its dissolution, BOM conducted testing required by part 15 (Requirements for approval of explosives and sheathed explosive units) on our behalf at its Pittsburgh Research Center. In 1996 this facility was transferred to the Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH) as a purely research function (Pub. L. 104–208). NIOSH initially assisted us with part 15 testing, but no longer has the resources to conduct these tests. To resolve this issue, the direct final rule allows us to use other organizations to conduct part 15 testing. The direct final rule does not diminish existing safety or health protections for miners.

II. Discussion of Comments

Since the rule requirements were not controversial and primarily concerned agency procedures, we determined that the subject of this rulemaking was suitable for a direct final rule. We anticipated no significant adverse comments; however, we published a separate, identical proposed rule (70 FR 46345) concurrently with the direct final rule. A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of a direct final rule, we consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process. A comment recommending an addition to the rule is not considered significant and adverse unless the comment explains how the rule would be ineffective without the addition.

We received only one comment on the direct final rule. The commenter stated that fees should be increased and used to offset environmental damage caused by mining operations. The commenter misinterprets the purpose of the fees in the direct final rule. As noted earlier, the primary purpose of the direct final rule was to address fee calculation and administration to cover the cost of Approval and Certification Center services, including ''approvals'' as explained in the direct final rule's preamble 70 FR 46336–46337.

Accordingly, we do not consider this comment to be a significant adverse comment because it goes beyond the scope of the rulemaking, does not explain why the direct final rule is inappropriate, does not challenge the rule's underlying premise, and does not explain why the direct final rule would be ineffective or unacceptable without a change.

Since we have received no significant adverse comments, the direct final rule is effective on the date indicated above.

Dated: November 1, 2005.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 05–22091 Filed 11–4–05; 8:45 am]

BILLING CODE 4510–43–P

Federal Register

Monday,
November 7, 2005

Part VI

The President

Federal Register
Vol. 70, No. 214
Monday, November 7, 2005

Presidential Documents

Title 3—

The President

Proclamation 7956 of November 2, 2005

National American Indian Heritage Month, 2005

By the President of the United States of America

A Proclamation

National American Indian Heritage Month honors the many contributions and accomplishments of American Indians and Alaska Natives. During November, we remember the legacy of the first Americans and celebrate their vibrant and living traditions.

The American Indian experience is central to the American story, and my Administration is committed to helping Native American cultures across the United States continue to flourish. One of the most important ways to ensure a successful future is through education. Over the past 4 years, my Administration has provided more than $1 billion for the construction and renovation of Bureau of Indian Affairs schools. We also offer direct assistance for educator and counselor training to help make sure every classroom has a qualified teacher and every child has the tools he or she needs to succeed. As we work with tribal leaders to provide students with a superior education that respects the unique culture and traditions of the community, we can help ensure every child has the opportunity to realize their dreams.

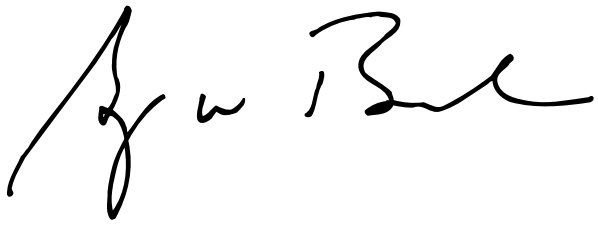
To enhance energy opportunities and strengthen tribal economies, my Administration is working to ease the regulatory barriers associated with tribal energy development. In August, I signed the Energy Policy Act of 2005, allocating $2 billion in the form of grants, loans, and loan guarantees for exploration, development, and production of energy. This legislation will help ensure that latest energy technologies are being used throughout our country.

Since the earliest days of our Republic, Native Americans have played a vital role in our country's freedom and security. From the Revolutionary War scouts to the Code Talkers of World War II, Native Americans have served in all branches of America's Armed Forces. Today, that proud tradition continues, with Native Americans bravely defending our country in Operations Enduring Freedom and Iraqi Freedom and helping to spread liberty around the world. America is grateful to all our service men and women who serve and sacrifice in the defense of freedom.

Our young country is home to an ancient, noble, and enduring native culture, and my Administration recognizes the defining principles of tribal sovereignty and the right to self-determination. By working together, government to government, on important education, economic, and energy initiatives, we can strengthen America and build a future of hope and promise for all Native Americans. This month, we pay tribute to the American Indians and Alaska Natives who continue to shape our Nation. I encourage all citizens to learn more about the rich heritage of Native Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2005 as National American Indian Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–22296
Filed 11–4–05; 9:20 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7957 of November 2, 2005

National Family Caregivers Month, 2005

By the President of the United States of America

A Proclamation

Each November, as Americans reflect on our many blessings, we observe National Family Caregivers Month and give thanks for the selfless service of family caregivers on behalf of their loved ones in need. The tireless devotion of these Americans brings comfort and peace of mind to our Nation's elderly and to those who are chronically ill or disabled.

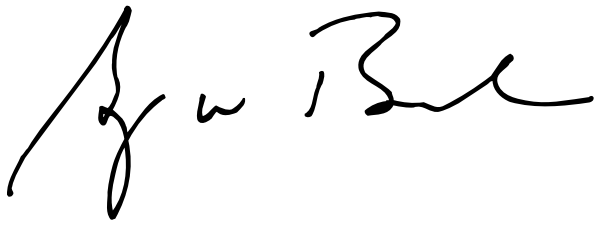
Family caregivers play an important role in communities across the United States. They provide most of the homecare services in our country and work hard to meet the emotional and physical needs of the family members and friends for whom they care. Through the National Family Caregiver Support Program, my Administration continues to encourage States and local agencies on aging to partner with faith-based, community, and tribal organizations. These partnerships can offer family caregivers the important information, counseling, training, respite care, and support services they need.

This November, enrollment begins under the new Medicare prescription drug benefit, which offers more affordable access to prescription drugs, better health care choices, and extra help to low-income seniors and beneficiaries with disabilities. This new coverage will help family caregivers, who often inform or make medical decisions for those they care for, by ensuring that their loved ones receive the best health care available.

Every day, family caregivers sacrifice their own needs to offer their loved ones the opportunity to live with dignity and independence in familiar surroundings. Their love, selflessness, and devotion inspire us all and demonstrate the compassionate spirit of America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2005 as National Family Caregivers Month. I encourage all Americans to honor and support those who serve as caregivers to their family members, friends, and neighbors in need.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–22297
Filed 11–4–05; 9:20 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7958 of November 3, 2005

National Alzheimer's Disease Awareness Month, 2005

By the President of the United States of America

A Proclamation

National Alzheimer's Disease Awareness Month is an opportunity to recognize the strength of family members, doctors, nurses, volunteers, and others who provide care for those living with this devastating disease. During this month, we also reaffirm our commitment to victims of this disease. We hope to enhance the quality of life for Alzheimer's patients and improve prevention and treatment.

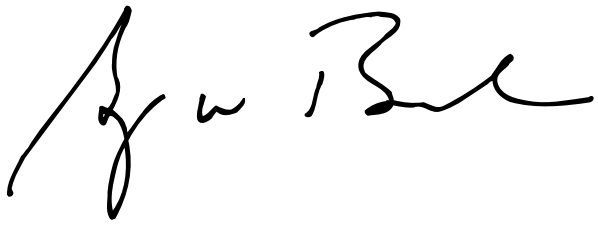
Approximately 4.5 million Americans are affected by Alzheimer's disease. The disease gradually destroys parts of the brain that control memory, learning, communication, and reason. As it progresses, individuals may also experience changes in behavior and personality, leading to severely impaired cognitive abilities and the need for full-time care and assistance. Age remains the greatest risk factor—the National Institute on Aging estimates that the percentage of people who develop Alzheimer's disease doubles for each 5-year age group beyond 65. Alzheimer's affects nearly half of those over 85.

While there is no known cure or certain treatment, researchers are learning more about what causes this tragic disease and how to control its symptoms. My Administration remains committed to funding medical research programs to help prevent, treat, and find a cure for Alzheimer's disease. The National Institute on Aging has begun new initiatives to improve development and testing of medicines that may slow progression of the disease. The Department of Veterans Affairs is supporting research through its Geriatric Research, Education and Clinical Centers, and the Administration on Aging is working to improve home and community-based services for Alzheimer's patients. By working together, we can learn more about treatment options and bring greater comfort to those afflicted with this disease.

Our Nation is grateful for the scientists, researchers, and health care professionals who are dedicated to treating Alzheimer's patients and finding a cure. We are also grateful for the hard work and compassionate spirit of family members and caregivers. Their efforts reflect the character and spirit of America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2005 as National Alzheimer's Disease Awareness Month. I call upon all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–22298
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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.