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WHO: Sponsored by the Office of the Federal Register.

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

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3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, December 6, 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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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300, 307, 315, 316, 330, 335, 550, 551, and 720

RIN 3206–AJ90

Veterans Recruitment Appointments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions of the Jobs for Veterans Act, signed into law on November 7, 2002. This Act makes a major change in the eligibility criteria for obtaining a Veterans Recruitment Appointment (VRA).

EFFECTIVE DATE: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Darlene Phelps at (202) 606–0960, by FAX on 202–606–2329, TDD at (202) 418–3134, or by e-mail at *Darlene.phelps@opm.gov*.

SUPPLEMENTARY INFORMATION: On November 5, 2004, OPM issued proposed regulations at 69 FR 64503 to implement Veterans Recruitment Appointments as authorized by the Jobs for Veterans Act (Pub. L. 107–288), and requested comments by January 4, 2005. The Act amends section 4214 of title 38, United States Code, to make a major change in the eligibility criteria for obtaining what previously was called a Veterans Readjustment Appointment and will now be called a Veterans Recruitment Appointment (VRA). Under the revised law, the following veterans are eligible for a VRA:

- Disabled veterans;
- Veterans who served on active duty in the Armed Forces during a war, or in a campaign or expedition for which a campaign badge has been authorized;
- Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces Service Medal was awarded; and
- Recently separated veterans.

The law defines *recently separated veteran* as any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

Comments

OPM received comments from three Federal agencies, one private organization, and seven individuals. The following comments are addressed according to the corresponding sections of the regulation.

Definitions

One Federal agency recommended that the final regulation clarify what is meant by the term *war*, as used in the context of a *covered veteran*. An individual suggested OPM specify that the term *war* only refers to World Wars I and II. We agree that clarification is needed and have amended section 307.102 to include a definition of the term *war* as any armed conflict declared by Congress as such.

One agency asked that we clarify whether the appointment date for *recently separated veterans* must occur before the end of the 3-year eligibility period for this category of *covered veterans*. OPM agrees that further clarification is needed and has added clarifying language to section 307.104(d) indicating that the Veterans Recruitment Appointment date must occur before the expiration of the 3-year eligibility period. The 3-year eligibility period may not be extended.

An individual suggested we specify that a veteran is eligible for a VRA only if during his or her last active duty tour the veteran served the entire period for which he or she was called or ordered to active duty. OPM disagrees and is not adopting this suggestion because it may limit the eligibility of veterans beyond what is provided for in the Act, which does not define eligibility based on the veteran's fulfillment of his or her last active duty tour.

A Federal agency recommended that we modify the definition of *qualified* to make clear that individuals must meet OPM qualifications for the position being filled under this authority. OPM agrees clarification is necessary in the final regulation. VRAs are excepted appointments to positions otherwise in the competitive service and as such, agencies must apply either the OPM or OPM-approved agency-specific qualification standard for the position they are filling through this authority as they would when filling any position in the competitive service. Clarification has been added at section 307.103.

One private organization suggested the final regulation specifically state that military service must have been performed *under honorable conditions* as part of the definition of *covered veteran*. OPM disagrees because the definition of *covered veteran* at 307.102 is as that term is defined in 38 U.S.C. 4212(a)(3). We note, however, this requirement is contained in section 307.103, *Nature of VRAs*.

One individual asked that we clarify whether the definition of a *covered veteran* includes all veterans entitled to 5 point preference. The Act's definition of a *covered veteran* does not provide for inclusion of all individuals entitled to 5 point veterans' preference. OPM intends to update VetGuide to provide further guidance regarding *covered veterans*.

A Federal agency suggested the final regulations clearly explain that individuals who did not serve during a war, who are not disabled, or who were not recently separated must have actually received a campaign badge, expeditionary medal, or Armed Forces Service Medal to be eligible for a VRA under section 307.102(2) and (3). We agree and have amended section 307.103 accordingly.

An individual stated that OPM did not define *eligible veterans* under this part and asked whether reservists called to active duty under title 10 of the United States Code, for other than active duty training, would meet the definition of a *recently separated veteran*. OPM does not agree further clarification is needed because section 307.102 clearly states that a *recently separated veteran* means any veteran (including reservists) during the three-year period beginning on the date of such veteran's discharge or release from active duty.

Nature of VRAs

Another Federal agency suggested the final regulations allow military experience to be qualifying at GS–3 or equivalent levels, regardless of the type of appointment. OPM did not adopt this

recommendation because it is beyond the scope of the Act, which only pertains to VRA appointments.

An agency suggested the final regulation define what *equivalent* means for purposes of qualifying veterans at the GS–3 level or equivalent. OPM agrees in part that clarification is needed and intends to update VetGuide to explain that the term *equivalent* means positions in the Federal Wage System or other pay systems involving duties comparable to those at the GS–3 level.

Another agency recommended that OPM modify the statement in 307.103 that any military service is qualifying at the GS–3 level or equivalent to read any military service is qualifying, at a minimum, at the GS–3 level or equivalent. OPM is not adopting this suggestion because we do not believe the additional language is needed. The sentence immediately preceding the language in question in section 307.103 specifically states that *covered veterans* may be appointed to any position for which the individual is qualified, up to and including the GS–11 or equivalent level. Military experience may be credited towards grade levels above the GS–3 level or equivalent in accordance with OPM or OPM-approved agency-specific qualification standards.

An individual suggested OPM define the phrase ''under honorable conditions'' to include general and uncharacterized discharges. Two individuals and a Federal agency recommended that we provide detailed explanations and examples of the types of discharges considered to be ''under honorable conditions.'' A third individual asked that we clarify whether an uncharacterized discharge is considered to be a discharge granted ''under honorable conditions.'' OPM is not adopting these suggestions because the Department of Defense (DoD) is responsible for defining terms used for character of military service discharges. OPM agrees clarification would be helpful and intends to provide guidance and examples in VetGuide of the types of discharges DoD has determined to be *under honorable conditions.*

An individual suggested we clarify whether 30 percent disabled veterans are subject to the GS–11 or equivalent grade level limitation. OPM is not adopting this suggestion on the basis that the regulation clearly limits the appointment of any veteran to the GS–11 or equivalent grade level. We note that a separate hiring authority, authorized under section 3112 of title 5, United States Code, specific to 30 percent or more disabled veterans, does not contain a grade level limitation for initial appointment under that authority.

One individual suggested the final regulations clarify whether agencies are required to post vacancy announcements prior to filling jobs under the VRA authority. OPM disagrees further clarification is necessary. The regulation clearly states that VRAs are excepted appointments made without competition. As a consequence, VRAs do not require public notice as is the case with any appointment in the excepted service. However, agencies may advertise for these positions if they choose to do so.

A Federal agency suggested the final regulations clarify whether an individual can receive more than one VRA appointment, assuming the individual is otherwise eligible. OPM agrees further clarification may be helpful. OPM intends to update VetGuide with a statement explaining there is no limit on the number of VRA appointments an individual may receive as long as the individual meets the definition of *covered veteran* at the time of appointment.

The Act also changed the name of the VRA from ''Veterans Readjustment Appointment'' to ''Veterans Recruitment Appointment.'' This final regulation also updates those parts of title 5, Code of Federal Regulations, to reflect this name change wherever used in those parts.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 300, 307, 315, 316, 330, 335, 550, 551, and 720

Administrative practice and procedure, Armed forces reserves, Civil rights, Claims, District of Columbia, Equal employment opportunity, Freedom of information, Government employees, Individuals with disabilities, Lawyers, Reporting and recordkeeping requirements, Selective Service System, Veterans, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM amends 5 CFR parts 300, 315, 316, 330, 335, 550, 551, and 720 and revises part 307 as set forth below:

PART 300—EMPLOYMENT (GENERAL)

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

■ 2. Revise paragraph (b) of § 300.301 to read as follows:

§ 300.301 Authority.

* * * * *

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or a Veterans Recruitment Appointment, to a position in the competitive service.

* * * * *

■ 3. Revise part 307 to read as follows:

PART 307—VETERANS RECRUITMENT APPOINTMENTS

Sec.

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

§ 307.101 Purpose.

This part implements 38 U.S.C. 4214 and Executive Order 11521, which authorizes agencies to appoint *qualified covered veterans* to positions in the competitive service under Veterans Recruitment Appointments (VRAs) without regard to the competitive examining system.

§ 307.102 Definitions.

For purposes of this part—

Agency, as defined in 38 U.S.C. 4211(5), means any agency of the Federal Government or the District of Columbia, including any Executive agency as defined in section 105 of title 5, and the United States Postal Service and Postal Rate Commission.

Covered veterans, as defined in 38 U.S.C. 4212(a)(3), means any of the following:

(1) Disabled veterans;

(2) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for

which a campaign badge has been authorized;

(3) Veterans who, while serving on active duty with the Armed Forces, participated in a United States military operation for which an Armed Forces Service Medal (AFSM) was awarded pursuant to Executive Order 12985 (61 FR 1209); and

(4) Recently separated veterans.

Disabled veteran, as defined in 38 U.S.C. 4211 means:

(1) A veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Qualified, as defined in 38 U.S.C. 4212(a)(3) with respect to employment in a position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

Recently separated veteran, as defined in 38 U.S.C. 4211(6), means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

Substantially continuous service is defined in 5 CFR 315.201(b)(3).

War means any armed conflict declared by Congress as such.

§ 307.103 Nature of VRAs.

VRAs are excepted appointments, made without competition, to positions otherwise in the competitive service. The veterans' preference procedures of part 302 of this chapter apply when there are preference eligible candidates being considered for a VRA. *Qualified covered veterans* who were separated *under honorable conditions* may be appointed to any position in the competitive service at grade levels up to and including GS–11 or equivalent, provided they meet the qualification standards for the position. To be eligible for a VRA as a *covered veteran* under paragraph (2) or (3) of the definition of that term in § 307.102, the veteran must be in receipt of the appropriate campaign badge, expeditionary medal, or AFSM. For purposes of a VRA, any military service is qualifying at the GS–3 level or equivalent. Upon satisfactory completion of 2 years of substantially continuous service, the incumbent's VRA must be converted to a career or career conditional appointment. An individual may receive more than one VRA appointment as long as the individual meets the definition of a *covered veteran* at the time of appointment.

§ 307.104 Treatment of individuals serving under VRAs.

(a) Because VRAs are made to positions otherwise in the competitive service, the incumbents, like competitive service employees, may be reassigned, promoted, demoted, or transferred in accordance with the provisions of part 335 of this chapter.

(b) A veteran with less than 15 years of education must receive training or education prescribed by the agency.

(c) Appointments are subject to investigation by OPM. A law, Executive order, or regulation that disqualifies a person for appointment in the competitive service also disqualifies a person for a VRA.

(d) The Veterans Recruitment Appointment date for a *recently separated veteran* must occur before the end of the 3-year eligibility period and may not be extended.

§ 307.105 Appeal rights.

Individuals serving under VRAs have the same appeal rights as excepted service employees under parts 432 and 752 of this chapter. In addition, as established in § 315.806 of this chapter, any individual serving under a VRA, whose employment under the appointment is terminated within 1 year after the date of such appointment, has the same right to appeal that termination as a career or career-conditional employee has during the first year of employment.

PART 315—CAREER AND CAREER-CONDITIONAL APPOINTMENT

■ 4. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 Stat. 1575–76. Sec. 315.708 also issued under E.O. 13318. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

PART 315—[AMENDED]

■ 5. In part 315, remove the word ''readjustment'' and add in its place the word ''recruitment'' wherever it appears.

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 6. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

PART 316—[AMENDED]

■ 7. In part 316, subparts C and D, remove the word ''readjustment'' and add in its place the word ''recruitment'' wherever it appears.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

■ 8. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954–58, Comp., p. 218.

Section 330.102 also issued under 5 U.S.C. 3327.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart K also issued under sec. 11203 of Pub. L. 105–33 (111 Stat. 738) and Pub. L. 105–274 (112 Stat. 2424).

Subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

PART 330—[AMENDED]

■ 9. In part 330, subparts B, F, and G, remove the word ''readjustment'' and add in its place the word ''recruitment'' wherever it appears.

PART 335—PROMOTION AND INTERNAL PLACEMENT

■ 10. The authority citation for part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304(f), and Pub. L. 106–117.

§ 335.103 [Amended]

■ 11. In § 335.103, remove the word ''readjustment'' and add in its place the word ''recruitment'' wherever it appears.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart G—Severance Pay

■ 12. The authority citation for part 550, subpart G, continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

§ 550.703 [Amended]

■ 13. In § 550.703, remove the word ''readjustment'' and add in its place the word ''recruitment'' wherever it appears.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT (GENERAL)

■ 14. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204(f)).

§ 551.423 [Amended]

■ 15. In § 551.423, remove the word ''readjustment'' and add in its place the word ''recruitment'' wherever it appears.

PART 720—AFFIRMATIVE EMPLOYMENT PROGRAMS

■ 16. The authority citation for part 720 continues to read as follows:

Authority: 5 U.S.C. 7201; 42 U.S.C. 2000e; 38 U.S.C. 101(2), 2011(3), 2014; 5 U.S.C. 3112; 29 U.S.C. 791(b).

■ 17. Revise § 720.301 to read as follows:

§ 720.301 Purpose and authority.

This subpart sets forth requirements for agency disabled veteran affirmative action programs (DVAAPs) designed to promote Federal employment and advancement opportunities for qualified disabled veterans. The regulations in this subpart are prescribed pursuant to responsibilities assigned to the Office of Personnel Management (OPM) under 38 U.S.C. 4214, and section 307 of the Civil Service Reform Act of 1978 (5 U.S.C. 3112).

[FR Doc. 05–23497 Filed 11–30–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–019–4]

Certification Program for Imported Articles of *Pelargonium* spp. and *Solanum* spp. to Prevent Introduction of Potato Brown Rot; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting an error in the amendatory instructions in our final rule that amended the provisions of a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known to occur. The final rule was effective and published in the **Federal Register** on October 24, 2005 (70 FR 61351–61362, Docket No. 03–019–3).

EFFECTIVE DATE: December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Van Dersal, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6653.

SUPPLEMENTARY INFORMATION: In a final rule effective and published in the **Federal Register** on October 24, 2005 (70 FR 61351–61362, Docket No. 03–019–3), we amended the provisions of a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where the bacterium *Ralstonia solanacearum* race 3 biovar 2 is known to occur.

In the final rule, it was our intention to amend the regulations by amending paragraph (r)(3)(viii) of § 319.37–5 to modify its restrictions on growing media used in production of articles of *Pelargonium* spp. and *Solanum* spp. under the certification program. However, our amendatory instruction referred instead to paragraph (r)(3)(vii). This document corrects that error by revising paragraph (r)(3)(viii).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR part 319 is corrected by making the following correcting amendments:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.37–5, revise paragraph (r)(3)(viii) to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(r) * * *

(3) * * *

(viii) Growing media for articles of *Pelargonium* spp. and *Solanum* spp. must be free of *R. solanacearum* race 3 biovar 2. Growing media and containers for articles of *Pelargonium* spp. and *Solanum* spp. must not come in contact with growing media that could transmit *R. solanacearum* race 3 biovar 2 and must be grown in an APHIS-approved growing medium.

* * * * *

Done in Washington, DC, this 22nd day of November 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23531 Filed 11–30–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE218, Special Condition 23–158–SC]

Special Conditions; Cessna Aircraft Company; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Cessna Aircraft Co., for the Type Certificate of Model 510 Mustang airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of an Electronic Flight Instrumentation System (EFIS), Digital Air Data Computer (ADC), and a Full Authority Digital Engine Control (FADEC). The applicable regulations do not adequately consider failure of

electrical and electronic systems performing critical functions from the effects of external HIRF. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to this airplane.

DATES: The effective date of these special conditions is November 17, 2005. Comments must be received on or before January 3, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE218, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE218. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

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

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE218.'' The postcard will be date stamped and returned to the commenter.

Background

On January 28, 2004, Cessna Aircraft Company; One Cessna Boulevard; Post Office Box 7704; Wichita, KS 67277, made an application to the FAA for a new Type Certificate for the Cessna Model 510 Mustang. The Cessna 510 will be approved under a new Type Certificate Data Sheet (TCDS) Number when Type Certificate (TC) is issued. The proposed modification incorporates a novel or unusual design feature, a digital air data computer, which may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the terms of § 21.17, Cessna Aircraft must show that the Model 510 Mustang meets the following provisions, the provisions of other applicable special conditions, or the applicable regulations in effect on the date of application for their type certificate: Federal Aviation Regulations (FAR) part 23 effective February 1, 1965 as amended by Amendments 23–1 through 23–54; Special Conditions applied to § 23.45, § 23.51, § 23.53, § 23.55, § 23.57, § 23.59, § 23.61, § 23.63, § 23.66, § 23.67, § 23.73, § 23.75, § 23.77, § 23.177, § 23.201(e), § 23.203(c), § 23.251, § 23.253, § 23.735, § 23.1195, § 23.1197, § 23.1199, § 23.1201, § 23.1323, § 23.1505, § 23.1583, § 23.1585, § 23.1587; Equivalent Levels of Safety applied to § 23.1305(c)(2), § 23.1305(c)(5), § 23.1549(a) thru (d), § 23.841(b)(6), § 23.841(a), § 23.807(e), § 23.1435(a)(2), and § 23.1555(d); an exemption to § 23.181(b); FAR part 34 as amended by the Amendment in effect on the date of certification; and FAR part 36 as amended by the Amendment in effect on the day of application; the certification requirements applied to the EFIS, Air Data Computer, and FADEC, and these terms of these Special Conditions.

Discussion

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

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

Special conditions are initially applicable to the models for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.17.

Novel or Unusual Design Features

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

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

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

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

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

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

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

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

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

or,

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

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

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

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 510 Mustang airplane. Should Cessna apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

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

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Model 510 Mustang airplane.

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

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

Issued in Kansas City, Missouri on November 17, 2005.

David R. Showers,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23523 Filed 11–30–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE235, Special Condition 23–175–SC]

Special Conditions; New Piper Aircraft, Inc.; PA–34; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to the New Piper Aircraft, Inc., Vero Beach, Florida, for a type design

change for the PA–34 model airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model 700–00006–XXX(), manufactured by Avidyne Corporation, Inc. for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is November 17, 2005. Comments must be received on or before January 3, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE235, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE235. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

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

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE235.'' The postcard will be date stamped and returned to the commenter.

Background

The New Piper Aircraft, Inc., Vero Beach, Florida, has made application to revise the type design of the PA–34 model airplanes. The model is currently approved under the type certification basis listed on Type Certificate Data Sheet (TCDS) A7SO. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, New Piper Aircraft, Inc, must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations identified on the appropriate TCDS. In addition, the type certification basis of the airplanes embodying this modification will include the additional certification basis for installation of the Avidyne Entegra EFIS: 14 CFR part 23 regulations FAR 23.301, 23.337, 23.341, 23.473, 23.561, 23.607, 23.611, as amended by Amdt. 23–48; FAR 23.305, 23.613, 23.773, 23.1525, 23.1549 as amended by Amdt. 23–45; FAR 23.777, 23.1191, 23.1337 as amended by Amdt. 23–51; FAR 23.867, 23.1303, 23.1307, 23.1309, 23.1311, 23.1321, 23.1323, 23.1329, 23.1351, 23.1353, 23.1359, 23.1361, 23.1365, 23.1431 as amended by Amdt. 23–49; FAR 23.1305 as amended by Amdt. 23–52; FAR 23.1322, 23.1331, 23.1357 as amended by Amdt. 23–43; FAR 23.1325, 23.1543, 23.1545, 23.1555, 23.1563, 23.1581, 23.1583, 23.1585 as amended by Amdt. 23–50; FAR 23.1523 as amended by Amdt. 23–34; FAR 23.1529 as amended by Amdt. 23–26; and the special conditions adopted by this rulemaking action.

Discussion

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

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

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

Novel or Unusual Design Features

The New Piper Aircraft, Inc plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

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

through the cockpit window apertures is undefined.

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

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

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

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

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

or,

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

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

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

Applicability

As discussed above, these special conditions are applicable to New Piper PA–34 model airplanes.

Conclusion

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

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for New Piper PA–34 model airplanes modified by installation of the factory optional Avidyne Entegra EFIS system.

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

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

Issued in Kansas City, Missouri on November 17, 2005.

David R. Showers,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23524 Filed 11–30–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 050812221–5221–01]

RIN 0694–AD50

Revisions to the Import Certificate Requirements in the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security is removing the requirement to obtain an Import Certificate in support of an export or reexport license when the ultimate consignee or purchaser is a foreign government or agency of Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia, and India. The requirement is being removed for Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia because of their membership in the North Atlantic Treaty Organization (NATO) and their commitment to export controls, as is reflected by their membership in multiple export control regimes, such as the Wassenaar Arrangement, the Australia Group, the Missile Technology Control Regime, and Nuclear Suppliers Group. This requirement is being removed for India because of the actions it has taken under the U.S.-India Next Steps in Strategic Partnership.

EFFECTIVE DATE: December 1, 2005.

ADDRESSES: Although this is a final rule, comments are welcome and should be addressed to Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, E-mailed to: *tmooney@bis.doc.gov,* or faxed to 202–482–3355.

Comments regarding the collections of information associated with this rule, including suggestions for reducing the burden, should be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503—Attention: David Rostker; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

The import certificate requirement has its foundation in the Coordinating Committee on Multilateral Export Controls (COCOM). COCOM is a former multilateral organization that cooperated in restricting strategic exports (conventional weapons and dual use items that are controlled for national security reasons on the Commerce Control List) to Eastern Bloc (communist-governed countries) during the Cold War era. Although COCOM was officially disbanded on March 31, 1994, the import certificate remains in use by the United States and many other countries.

U.S. exporters are required by §§ 748.9 and 748.10 of the Export Administration Regulations (EAR) to obtain and retain Import Certificates for the export of items controlled for national security (NS) reasons on the Commerce Control List, when a license is required. This import certificate requirement applies to licensed exports to 29 Wassenaar Arrangement members and 7 additional countries (India, China, Hong Kong, Liechtenstein, Pakistan, Singapore and Taiwan). An Import Certificate is a certification by the issuing government that the importer has undertaken to import the items stated on the import certificate, that the items will not be diverted or reexported without notification or authorization of the importing government, and, depending on the country, the importer will notify or seek authorization from the importing government if any of the facts of the import certificate change. For some countries, the importer also certifies that he or she will provide, if asked, verification that possession of the item was taken. In general, there is an exemption from obtaining an Import Certificate when the ultimate consignee or purchaser is a government agency. However, prior to publication of this rule, certain countries were excluded from this exemption (*see* § 748.9(a)(2)).

This rule eliminates the requirement for Import Certificates set forth in section 748.9(a)(2) when the ultimate consignee or purchaser is a government entity in Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia. These countries are members of North Atlantic Treaty Organization (NATO), and have taken steps to implement effective national security export control regimes, as demonstrated by their membership in the Wassenaar Arrangement.

In addition, in 2004, the United States committed to reviewing the Import Certificate requirement for India, as a part of the U.S.-India High Technology Group (HTCG) discussions. The HTCG was formed in 2002 to identify barriers to legitimate high technology trade. In the course of these discussions, the Import Certificate requirement was identified as a non-tariff barrier to expanded trade. In light of the actions taken by the Government of India with regard to controlled goods or technologies it imports from the United States pursuant to the U.S.-India Next Steps in Strategic Partnership, this rule removes the Import Certificate requirement for exports to Indian Government entities under section 748.9(a)(2).

Although the Export Administration Act expired on August 20, 2001, the President, through 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), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act 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 rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0093, Import Certificates, End-User Certificates, and Delivery Verification Procedures,'' which carries a burden hour estimate of 15 to 30 minutes per response. This rule is anticipated to have a slight decrease on the number of licenses that require Import Certificates and not to alter the range of total burden hours associated with this control number. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

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

4. The 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 and foreign affairs function of the United States (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 final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 748

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

■ Accordingly, part 748 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 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).

■ 2. Section 748.9 is amended by revising paragraph (a)(2) to read as follows:

§ 748.9 Support Documents for License Applications.

(a) * * *

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies), other than the government of the People's Republic of China. To determine whether the parties to your transaction meet the definition of ''government agency'' refer to the definition contained in part 772 of the EAR. Remember, if either the ultimate consignee or purchaser is not a foreign government or foreign government agency, a statement is required from the nongovernmental party.

* * * * *

Dated: November 28, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–23533 Filed 11–30–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address for the American Society for Testing Materials (ASTM). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: This document amends FDA's regulations to reflect the address change of ASTM by removing the outdated address wherever it appears and by adding the new address in its place in 21 CFR parts 172, 175, 176, 177, 178, and 179.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

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

Chapter I [Nomenclature changes]

■ 1. Parts 172, 175, 176, 177, 178, and 179 are amended by removing ''1916 Race St., Philadelphia, PA 19103'' or ''1916 Race Street, Philadelphia, PA 19103'' and adding in its place ''100 Barr Harbor Dr., West Conshohocken, Philadelphia, PA 19428–2959'' wherever it appears.

Dated: November 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23521 Filed 11–30–05; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends Appendix D to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 2006. This rule also amends the PBGC's regulation on Disclosure to Participants by adding information on 2006 maximum guaranteed benefit amounts to Appendix B. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 2006.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age

65) by the PBGC. The ceiling is equal to ''$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200].'' This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Appendix D to part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to Appendix D to part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $69,900 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2006. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR 4022.22(b) is: $750 multiplied by $69,900/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2006 is $3,971.59 per month in the form of a life annuity beginning at age 65. This amendment updates Appendix D to part 4022 to add this maximum guaranteeable amount for plans that terminate in 2006. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $3,971.59 per month.)

For certain underfunded plans, section 4011 of ERISA requires the plan administrator to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2006 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2006 maximum guaranteeable benefit amounts for the information of the public.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

■ 1. The authority citation for Part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

■ 2. Appendix B to part 4011 is amended by adding a new entry to the end of the table to read as follows.

APPENDIX B TO PART 4011.—TABLE OF MAXIMUM GUARANTEED BENEFITS

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
*	*	*	*		*	*		*
2006	$3,971.59	$47,659.08	$3,137.56	$37,650.72	$2,581.53	$30,978.36	$1,787.22	$21,446.64

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 3. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 4. Appendix D to part 4022 is amended by adding a new entry to the end of the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix D to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * * * *	
2006	3,971.59

Issued in Washington, DC, this 16th day of November, 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–23517 Filed 11–30–05; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table that applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2006, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach ''unreduced retirement age'' (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–05 with Table I–06 in order to provide an updated correlation, appropriate for calendar year 2006, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–06 will be used to value benefits in plans with valuation dates during calendar year 2006.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2006, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2006.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing Table I–05 and adding in its place Table I–06 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–06.—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 2005, and before January 1, 2007]

Participant reaches URA in year—	Participant's retirement rate category is—			
	Low [1] if monthly benefit at URA is less than—	Medium [2] if monthly benefit at URA is		High [3] if monthly benefit is greater than—
		From	To	
2007	500	500	2,113	2,113
2008	512	512	2,164	2,164
2009	524	524	2,216	2,216
2010	536	536	2,269	2,269
2011	549	549	2,324	2,324
2012	562	562	2,379	2,379
2013	576	576	2,437	2,437

TABLE I–06.—SELECTION OF RETIREMENT RATE CATEGORY—Continued

[For plans with valuation dates after December 31, 2005, and before January 1, 2007]

Participant reaches URA in year—	Participant's retirement rate category is—			
	Low [1] if monthly benefit at URA is less than—	Medium [2] if monthly benefit at URA is		High [3] if monthly benefit is greater than—
		From	To	
2014	590	590	2,495	2,495
2015	604	604	2,555	2,555
2016 or later	618	618	2,616	2,616

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, DC, this 16th day of November, 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–23516 Filed 11–30–05; 8:45 am]

BILLING CODE 7708–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 253

[Docket No. 2005–6 CRB NCBRA]

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Board of the Library of Congress announces a cost of living adjustment of 4.3% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions in the BMI, ASCAP and SESAC repertoires. The cost of living adjustment is based on the change in the Consumer Price Index from October 2004 to October 2005.

DATES: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist, Copyright Royalty Board (CRB), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118 (c).

The most recent proceeding to consider the terms and rates for the section 118 license occurred in 2002. 67 FR 15414 (April 1, 2002). Final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works for the license period beginning January 1, 2003, and ending December 31, 2007, were published in the **Federal Register** on December 17, 2002. 67 FR 77170 (December 17, 2002). Pursuant to these regulations, on December 1 of each year the Librarian shall publish a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1 of that year. 37 CFR 253.10 (a). The regulations also require that the Librarian publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertoires by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 253.10 (b). Accordingly, the Copyright Royalty Board of the Library of Congress is hereby announcing the change in the Consumer Price Index and performing the annual cost of living adjustment to the rates set out in § 253.5 (c).

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 2004, to the most recent Index published before December 1, 2005, is 4.3% (2004's figure was 190.9; the figure for 2004 is 199.2, based on 1982–1984 = 100 as a reference base). Rounding off to the nearest dollar, the royalty rates for the use of musical compositions in the repertories of ASCAP, BMI, and SESAC are $273, $273, and $89 respectively.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Board amends 37 CFR part 253 as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.5 [Amended]

■ 2. Section 253.5 (c) (1) is amended by removing ''$262'' and adding ''$273'' in its place.

§ 253.5 [Amended]

■ 3. Section 253.5 (c) (2) is amended by removing ''$262'' and adding ''$273'' in its place.

§ 253.5 [Amended]

■ 4. Section 253.5 (c) (3) is amended by removing ''$85'' and adding ''$89'' in its place.

Dated: November 28, 2005.

Bruce G. Forrest,

Interim Chief Copyright Royalty Judge.

[FR Doc. 05–23548 Filed 11–30–05; 8:45 am]

BILLING CODE 1410–72–P

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Postal Service regulations pertaining to conduct on postal property. The purpose of these amendments is to clarify the regulations.

EFFECTIVE DATE: December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Susan L. Koetting, Attorney, (202) 268–4818.

SUPPLEMENTARY INFORMATION: The Postal Service's regulations pertaining to conduct on postal property, among other things, prohibit persons from soliciting signatures on petitions, polls, and surveys on postal property. 63 FR 34599 (June 25, 1998). This amendment clarifies that, with respect to §§ 232.1(h)(1) and 232.1(o), the regulations are not applicable to certain types of perimeter sidewalks surrounding Postal Service property that are owned in whole or in part by the Postal Service, that is, those that fall within the Postal Service's property lines. These sidewalks are those that surround the outer perimeters of Postal Service property and are indistinguishable from adjacent municipal or other public sidewalks. Because members of the public might not be able to distinguish this type of postal property from municipal or other public property, and thus might not realize that they have entered onto postal property, with respect to the sections listed above, the Postal Service will exclude such property from these regulations. Although it has always been the Postal Service's practice to not enforce these sections of the regulations on these types of perimeter sidewalks, specifically making these sections of the regulations inapplicable to such sidewalks eliminates potential confusion.

In addition, this amendment clarifies that the regulations do not apply at all to property that is owned or leased by the Postal Service, but is leased or subleased to private tenants for their exclusive use. Any restrictions to be imposed on property that is leased to private tenants will be contained in the subject lease or sublease.

The regulations continue to apply to other types of exterior Postal Service property that are open to the public, including internal sidewalks that are easily distinguishable from the perimeter sidewalks by means of some physical feature, such as sidewalks perpendicular to the perimeter sidewalks (''feeder'' sidewalks), sidewalks leading from a postal parking lot to the postal building, and other exterior areas, such as parking lots, porches, patios, and steps.

The amendment is also intended to clarify that the prohibition against soliciting signatures on postal property refers to the actual collection of the signatures and not to communication that promotes the signing of petitions, polls, and surveys somewhere other than on Postal Service premises. Any such activities are still subject to other provisions, as applicable, such as those prohibiting disturbances, soliciting contributions or collecting private debts, campaigning for public office, vending, commercial advertising, impeding ingress and egress, depositing or posting literature, and setting up tables, stands, or other structures.

The Postal Service, therefore, is revising Section 232.1(a) to specify that the regulations do not apply to real property, owned or leased by the Postal Service, that is leased or subleased by the Postal Service to private tenants for their exclusive use; or, with respect to §§ 232.1(h)(1) and 232.1(o), to sidewalks surrounding the outer perimeter of postal property that are indistinguishable from municipal or other public sidewalks, even when the Postal Service owns all or part of such sidewalks. In addition, the Postal Service is revising § 232.1(h)(1) to substitute the term ''collecting'' for ''soliciting'' in the provision pertaining to signatures on petitions, polls, and surveys and is moving the provision prohibiting blocking ingress and egress from post offices from § 232.1(h)(1) to § 232.1(e).

List of Subjects in 39 CFR Part 232

Federal buildings and facilities, Penalties, Postal Service.

■ In view of the considerations discussed above, the Postal Service adopts the following amendments to 39 CFR part 232.

PART 232—CONDUCT ON POSTAL PROPERTY

■ Part 232 is amended as follows:

■ 1. The authority citation for part 232 is revised to read as follows:

Authority: 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 1315; Pub. L. 104–208, 110 Stat. 1060.

■ 2. In § 232.1, paragraph (a) is revised to read as follows:

§ 232.1 Conduct on postal property.

(a) *Applicability.* This section applies to all real property under the charge and control of the Postal Service, to all tenant agencies, and to all persons entering in or on such property. This section shall be posted and kept posted at a conspicuous place on all such property. This section shall not apply to—

(i) Any portions of real property, owned or leased by the Postal Service, that are leased or subleased by the Postal Service to private tenants for their exclusive use;

(ii) With respect to sections 232.1(h)(1) and 232.1(o), sidewalks along the street frontage of postal property falling within the property lines of the Postal Service that are not physically distinguishable from adjacent municipal or other public sidewalks, and any paved areas adjacent to such sidewalks that are not physically distinguishable from such sidewalks.

* * * * *

§ 232.1 [Amended]

■ 3. In § 232.1(e), add the phrase ''impedes ingress to or egress from post offices, or otherwise'' before the term ''obstructs.''

§ 232.1 [Amended]

■ 4. In § 232.1(h)(1), remove the words ''soliciting signatures'' and add the words ''collecting signatures'' in their place. Delete the phrase ''and impeding ingress to or egress from post offices.''

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 05–23507 Filed 11–30–05; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7903]

Suspension of Community Eligibility

AGENCY: Department of Homeland Security, Federal Emergency Management Agency (FEMA), Mitigation Division.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed

within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
North Carolina:				
Freemont, Town of, Wayne County	370492	May 27, 1997, Emerg; May 27, 1997, Reg; December 2, 2005, Susp.	12/02/2005	12/02/2005.
Smithfield, Town of Johnston County ...	370140	January 20, 1975, Emerg; April 1, 1982, Reg; December 2, 2005, Susp.	.....do	Do.
Walnut Creek, Village of, Wayne County.	370435	October 19, 1989, Emerg; October 19, 1989, Reg; December 2, 2005, Susp.	.....do	Do.
Wayne County, Unincorporated Areas ..	370254	September 16, 1991, Emerg; September 16, 1991, Reg; December 2, 2005, Susp.	.....do	Do.

State/Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VII				
Missouri:				
Cole County, Unincorporated Areas	290107	January 21, 1982, Emerg; January 21, 1982, Reg; December 2, 2005, Susp.	.....do	Do.
Jefferson, City of, Cole County	290108	April 23, 1971, Emerg; April 15, 1980, Reg; December 2, 2005, Susp.	.....do	Do.
Nebraska:				
Bellevue, City of, Sarpy County	310191	April 13, 1973, Emerg; January 16, 1980, Reg; December 2, 2005, Susp.	.....do	Do.
Bennington, City of, Douglas County	310074	July 10, 1975, Emerg; December 4, 1979, Reg; December 2, 2005, Susp.	.....do	Do.
Douglas County, Unincorporated Areas	310073	November 15, 1974, Emerg; January 16, 1981, Reg; December 2, 2005, Susp.	.....do	Do.
Elkhorn, City of, Douglas County	310075	March 31, 1975, Emerg; August 15, 1979, Reg; December 2, 2005, Susp.	.....do	Do.
La Vista, City of, Sarpy County	310192	April 23, 1974, Emerg; January 16, 1980, Reg; December 2, 2005, Susp.	.....do	Do.
Omaha, City of, Douglas County	315274	November 6, 1970, Emerg; May 7, 1971, Reg; December 2, 2005, Susp.	.....do	Do.
Papillion, City of, Sarpy County	315275	July 2, 1971, Emerg; August 18, 1972, Reg; December 2, 2005, Susp.	.....do	Do.
Ralston, City of, Douglas County	310077	August 19, 1975, Emerg; May 15, 1980, Reg; December 2, 2005, Susp.	.....do	Do.
Sarpy County, Unincorporated Areas ...	310190	February 23, 1973, Emerg; January 16, 1981, Reg; December 2, 2005, Susp.	.....do	Do.
Valley, City of, Douglas County	310078	May 1, 1975, Emerg; March 18, 1980, Reg; December 2, 2005, Susp.	.....do	Do.

*.....do = Ditto.
Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: November 23, 2005.

Michael K. Buckley,

Deputy Director, Mitigation Division, Federal Emergency Management Agency.

[FR Doc. 05–23528 Filed 11–30–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 050927248-5310-02; I.D. 090805C]

RIN 0648–AT74

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Final rule; fishing season notification.

SUMMARY: This rule establishes the 2006 first trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on over- and underharvests from the 2005 first trimester season. In addition, this rule establishes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. This action could affect all commercial fishermen in the Atlantic commercial shark fishery. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data.

DATES: This rule is effective January 1, 2006. The Atlantic commercial shark fishing season opening and closing dates and quotas for the 2006 first trimester season by region are provided in Table 1 under Supplementary Information.

ADDRESSES: For copies of this rule, write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies are also available on the internet at *http://www.nmfs.noaa.gov/sfa/hms.*

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

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (Amendment 1), finalized in 2003, are implemented by regulations at 50 CFR part 635. Information regarding the rules establishing the regional quotas and the procedures for calculating the quotas was provided in the proposed rule (October 6, 2005; 70 FR 58366) and is not repeated here.

Opening and Closing Dates and Quotas

The final opening and closing dates and quotas for the 2006 first trimester season by region are provided in Table 1.

TABLE 1.—FINAL OPENING AND CLOSING DATES AND QUOTAS

Species Group	Region	Opening Date	Closure Date	Quota
Large Coastal Sharks	Gulf of Mexico	January 1, 2006	April 15, 2006 11:30 p.m. local time	222.8 mt dw (491,185 lb dw)
	South Atlantic		March 15, 2006 11:30 p.m. local time	141.3 mt dw (311,510 lb dw)
	North Atlantic		April 30, 2006 11:30 p.m. local time	5.3 mt dw (11,684 lb dw)
Small Coastal Sharks	Gulf of Mexico	January 1, 2006	To be determined, as necessary	14.8 mt dw (32,628 lb dw)
	South Atlantic			284.6 mt dw (627,429 lb dw)
	North Atlantic			18.7 mt dw (41,226 lb dw)
Blue sharks	No regional quotas	January 1, 2006	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)

Response to Comments

Comments on the October 6, 2005, proposed rule (70 FR 58366) received during the public comment period are summarized below, together with NMFS' responses.

Comment 1: NMFS should stop all commercial shark fishing and should not use catch data from the commercial shark fishing industry to establish population numbers.

Response: NMFS established a rebuilding plan for LCS in 2003 to stop overfishing and address the overfished status of the LCS complex, thus ensuring a sustainable harvest of LCS consistent with the Magnuson-Stevens Act. SCS, other than finetooth sharks, and pelagic sharks are not overfished and overfishing is not occurring. Finetooth shark overfishing is being addressed in the Draft Consolidated HMS FMP. NMFS relies on a number of both fishery dependent and independent data sources, including landings information from fishermen and dealers, in conducting stock assessments and establishing commercial quotas. NMFS does not believe that stopping all commercial shark fishing is warranted. Thus, stopping all commercial fishing could, needlessly, force out of business a number of businesses, including fishermen, processors, suppliers, and dealers and could, again needlessly, adversely affect a number of communities, including recreational fishing communities, would be adversely affected. The Magnuson-Stevens Act requires that NMFS maximize the economic benefit of all fishery resources. This includes the harvest of Atlantic sharks, for which there has been a management plan in place since the early 1990's.

Comment 2: NMFS should reduce shark harvests until the fishery has stabilized.

Response: The current rebuilding plan implemented in 2003, reduced the LCS quotas to 1,017 mt dw, thus ensuring a sustainable fishery and viability of Atlantic shark populations in compliance with the requirements of the Magnuson-Stevens Act and other domestic laws. NMFS believes that the current harvest levels are appropriate and is currently conducting a stock assessment for LCS. If necessary, NMFS will adjust the LCS quota based on the results of the stock assessment and any other relevant information.

Changes From the October 6, 2005, Proposed Rule (70 FR 58366)

NMFS is not implementing any changes to the proposed rule. The provisions published in the proposed rule are adopted as final.

Classification

This temporary rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification was published in the October 16, 2005, proposed rule (70 FR 58366). No comments were received regarding the economic impact of this rule, and no changes to the certification were made. As a result, no Final Regulatory Flexibility Act analysis was prepared. This final rule will not increase overall quotas, landings, or regional percentages for LCS or SCS, implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions.

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

NMFS determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management (CZM) programs of coastal states in the Atlantic, Gulf of Mexico, and Caribbean. NMFS asked for states' concurrence with this determination during the proposed rule stage. Florida, Mississippi, Rhode Island, New Hampshire, Massachusetts, North Carolina, and Pennsylvania replied affirmatively regarding the consistency determination, and one state (Texas) indicated that its CZM program no longer issues consistency determinations for federally managed

fishing activities. NMFS presumes that the remaining states that have not yet responded concur with the determination.

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

Dated: November 28, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 05–23532 Filed 11–30–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050112008–5102–02; I.D. 112505B]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1A

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1A (Area 1A) for 2005 is projected to be harvested by December 2, 2005. Therefore, effective 0001 hours, December 2, 2005, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1A per trip or calendar day until January 1, 2006, when the 2006 TAC becomes available, except for transiting purposes as described in this document. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that no TAC is available for the directed fishery for Atlantic herring harvested from Area 1A.

DATES: Effective 0001 hrs local time, December 2, 2005, through 2400 hrs local time, December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2005 TAC allocated to Area 1A (70 FR 21971, April 28, 2005) is 60,000 mt (132,277,621 lb).

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that, vessels are prohibited from fishing for, catching, possessing, transferring or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1A is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the total Atlantic herring TAC allocated to Area 1A for the 2005 fishing year is projected to be harvested by December 2, 2005. Therefore, effective 0001 hrs local time, December 2, 2005, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1A per trip or calendar day through December 31, 2005; except a vessel may transit, or land herring in Area 1A with more than 2,000 lb (907.2 kg) of herring on board, provided such herring were not caught in Area 1A, and provided all fishing gear is stowed and not available for immediate use as required by § 648.23(b). Effective December 2, 2005, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1A through December 31, 2005, 2400 hrs local time.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 25, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23534 Filed 11–28–05; 1:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 230
Thursday, December 1, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20354; Directorate Identifier 2004–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The original NPRM would have required an inspection for chafing of certain wire bundles located above the center fuel tank, corrective actions if necessary, and replacement of wire bundle clamps with new clamps. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by adding an inspection for damage to the fuel vapor barrier area located below the wire bundles and corrective action, if necessary. We are proposing this supplemental NPRM to prevent chafed wire bundles near the center fuel tank, which could cause electrical arcing through the tank wall and ignition of fuel vapor in the fuel tank, and result in a fuel tank explosion.

DATES: We must receive comments on this supplemental NPRM by December 27, 2005.

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

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

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

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–20354; Directorate Identifier 2004–NM–166–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The original NPRM was published in the **Federal Register** on February 15, 2005 (70 FR 7697). The original NPRM proposed to require an inspection for chafing of certain wire bundles located above the center fuel tank, corrective actions if necessary, and replacement of wire bundle clamps with new clamps.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, the airplane manufacturer has published Boeing Service Bulletin 737–28–1208, Revision 1, dated August 25, 2005. (The original issue, dated July 8, 2004, was referenced in the original NPRM as the appropriate source of service information for addressing the unsafe condition.) Revision 1 includes the following revisions to the accomplishment instructions of the service bulletin:

- Adds an inspection for damage to the fuel vapor barrier area located below the wire bundles and corrective action, if the fuel vapor barrier is present. The corrective action is to repair any damage in accordance with paragraph 8 of chapter 28–11–0 or paragraph 11 of chapter 28–11–00, as applicable, Integral Fuel Tanks—Approved Repairs, Secondary Fuel Barrier Sealant Approved Repairs, of the Boeing 737 Airplane Maintenance Manual.
- Removes reference to repairing wire damage in accordance with ''an approved equivalent procedure.''

• Adds instructions for installing a protective sleeve on the upper bundle of the bundle run at station 616, right buttock line (RBL) and left buttock line (LBL) 24.50.

Based on the changes made in Revision 1, we have made the following changes to this supplemental NPRM:

• Added the inspection of the fuel vapor barrier area to paragraph (f).

• Removed the difference statement, not allowing repair of wire damage in accordance with an approved equivalent procedure, from paragraph (f).

• Added the installation of the protective sleeve to paragraph (g).

• Referenced Revision 1 of Boeing Service Bulletin 737–28–1208 as the appropriate source of service information for accomplishing the proposed actions in paragraphs (f) and (g).

Accomplishing the actions specified in Revision 1 of the service bulletin is intended to adequately address the unsafe condition.

Comments

We have considered the following comments on the original NPRM.

Support for Original NPRM

One commenter, the manufacturer, supports the original NPRM.

Request To Revise Service Information

One commenter requests that Boeing Service Bulletin 737–28–1208, dated July 8, 2004, be revised to incorporate several proposed changes to the accomplishment instructions. The commenter states that it has coordinated these changes on-site with the airplane manufacturer. The commenter also states that if the original NPRM is mandated as proposed, the commenter would have to request approval for an alternative method of compliance (AMOC) for each airplane that incorporated the revised work instructions.

We agree, since the airplane manufacturer has published Revision 1 of Boeing Service Bulletin 737–28–1208, which incorporates the commenter's proposed changes. As discussed previously, we have revised this supplemental NPRM to reference Revision 1 as the appropriate source of service information for accomplishing the actions specified in paragraphs (f) and (g) of this supplemental NPRM.

Request To Revise ''Costs of Compliance''

The same commenter states that it completed the accomplishment instructions of Boeing Service Bulletin 737–28–1208, dated July 8, 2004, in 10 man-hours. The commenter also states that this figure excluded time for opening and closing access. We infer the commenter would like us to revise the ''Costs of Compliance'' section.

We disagree with the commenter's estimate. The ''Cost of Compliance'' section in this supplemental NPRM describes only the direct costs of the proposed actions. Based on the best data available, Revision 1 of Boeing Service Bulletin 737–28–1208 estimates 2 hours to inspect the wire bundles, 2 hours to replace the clamps, and 3 hours (rounded up from 2.25 hours) to install the protective sleeve. We recognize that, in doing these proposed actions, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain and close access, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. In this case, we agree with the manufacturer's estimate and accordingly have revised the ''Cost of Compliance'' section of this supplemental NPRM.

Clarification of Inspection Terminology

Boeing Service Bulletin 737–28–1208, Revision 1, specifies to ''inspect'' the fuel vapor barrier area located below the wire bundles. This supplemental NPRM, however, would require doing a detailed inspection. We have included the definition for a detailed inspection in a note in this supplemental NPRM.

Clarification of AMOC Paragraph

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

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 2,871 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number U.S.-registered airplanes	Fleet cost
Inspection	2	$65	None	$130	1,042	$135,460.
Replacement of wire bundle clamps and installation of protective sleeve.	5	65	$688 or $1,245, depending on applicable kit.	$1,013 or $1,570	1,042	Between $1,055,546 and $1,635,940.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–20354; Directorate Identifier 2004–NM–166–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent chafed wire bundles near the center fuel tank, which could cause electrical arcing through the tank wall and ignition of fuel vapor in the fuel tank, and result in a fuel tank explosion.

Compliance

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

Inspection of Wire Bundles and Fuel Vapor Barrier and Corrective Actions

(f) Within 60 months after the effective date of this AD: Do a detailed inspection for chafing of the wire bundles located below the passenger compartment, above the center fuel tank, aft of station 540 to approximately station 663.75, right buttock line (RBL) and left buttock line (LBL) 24.50; do a detailed inspection for damage to the fuel vapor barrier area located below the wire bundles, as applicable; and do any applicable corrective actions; by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–28–1208, Revision 1, dated August 25, 2005. Any corrective actions must be done before further flight.

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

Adjustment/Replacement of Wire Bundle Clamps and Installation of Protective Sleeve

(g) After performing the actions required by paragraph (f) of this AD: Before further flight, adjust and replace, as applicable, the wire bundle clamps located aft of station 540; and install a protective sleeve on the upper bundle of the bundle run at station 616, RBL and LBL 24.50; by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–28–1208, Revision 1, dated August 25, 2005.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on November 18, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23515 Filed 11–30–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23143; Directorate Identifier 2005–NM–177–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–100 Series Airplanes, Model A319–100 Series Airplanes, Model A320–111 Airplanes, Model A320–200 Series Airplanes, and Model A321–100 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A319, A320, and A321 series airplanes. The existing AD currently requires repetitive inspections to detect wear of the inboard flap trunnions, and to detect wear or de-bonding of the protective half-shells; corrective actions, if necessary; and terminating action. This proposed AD would remove the repetitive inspections to detect wear of the inboard flap trunnions and to detect wear or de-bonding of the protective half-shells; and corrective actions if necessary. This proposed AD would add repetitive detailed inspections of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and corrective actions if necessary. This proposed AD would also add airplanes to the applicability. This proposed AD results from reports of wear damage to the inboard flap trunnions after incorporation of the terminating modification. We are proposing this AD to detect and correct wear of the inboard flap trunnions, which could lead to loss of flap surface control and consequently result in the flap detaching from the airplane. A detached flap could result in damage to the tail of the airplane.

DATES: We must receive comments on this proposed AD by January 3, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–23143; Directorate Identifier 2005–NM–177–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On November 20, 2000, we issued AD 2000–24–02, amendment 39–12009 (65 FR 75603, December 4, 2000), for certain Airbus Model A319, A320, and A321 series airplanes. That AD requires repetitive inspections to detect wear of the inboard flap trunnions, and to detect wear or de-bonding of the protective half-shells; corrective actions, if necessary; and terminating action. That AD resulted from issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We issued that AD to prevent chafing and resultant wear damage on the inboard flap drive trunnions or on the protective half-shells, which could result in failure of the trunnion primary load path; this would adversely affect the fatigue life of the secondary load path and could lead to loss of the flap.

Actions Since Existing AD Was Issued

Since we issued AD 2000–24–02, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified us that operators have reported finding wear damage to the inboard flap trunnions after incorporating the terminating modification of AD 2000–24–02. Wear is caused when the sliding panel hook moves out of the protected area of the trunnion during flap operation. Wear of the inboard flap trunnion associated with a drive failure at track 2 or associated with a hard jam at track 1 could lead to loss of flap surface control. A free moveable flap could result in the flap detaching from the airplane. A detached flap could result in damage to the tail of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A320–57–1133, dated July 28, 2005. The service bulletin describes procedures for doing repetitive detailed inspections of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, doing any corrective actions if necessary, and reporting inspection results to the manufacturer. The corrective actions include the following:

- If the sliding panel is damaged, replacing the sliding panel with a new sliding panel at the next opportunity.
- If the trunnion is damaged, reworking the trunnion to a smooth contour and measuring the maximum depth of rework.
- If the maximum allowed damage limit of the trunnion has been exceeded, replacing the trunnion or flap before further flight.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–139, dated August 3, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2000–24–02 and would only continue to require accomplishing the modification (the terminating action of AD 2000–24–02). This proposed AD would also require repetitive detailed inspections of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and corrective actions if necessary.

Clarification of Applicability

French airworthiness directive F–2005–139 is applicable to Airbus Model A318, A319, A320, and A321 airplanes, all serial numbers that have received Airbus modification 26495 in production or Airbus Service Bulletin A320–27–1117 in service. In this NPRM, however, we have excluded reference to Model A318–100 series airplanes that have accomplished Airbus Service Bulletin A320–27–1117 in service from the applicability, since that service bulletin does not apply to those airplanes. Also, this NPRM applies to all Model A319–100 series airplanes, Model A320–111 airplanes, Model A320–200 series airplanes, and Model A321–100 series airplanes. For all of these airplanes, either Airbus modification 26495 was accomplished in production or Airbus Service Bulletin A320–27–1117 was accomplished in

service (as required by AD 2000–24–02 or French airworthiness directive 1996–271–092(B) R3, dated August 11, 1999). Therefore, for Model A319–100 series airplanes, Model A320–111 airplanes, Model A320–200 series airplanes, and Model A321–100 series airplanes, it is not necessary to reference Airbus modification 26495 or Airbus Service Bulletin A320–27–1117 in the applicability of the NPRM.

Clarification of Compliance Times for Corrective Actions

Where Airbus Service Bulletin A320–57–1133 specifies replacing the sliding panel at the next opportunity, this proposed AD would require replacing it within 600 flight hours after the proposed inspection.

If the trunnion is found damaged during any inspection, the service bulletin does not specify a compliance time for reworking the trunnion and measuring the maximum rework depth. This proposed AD would require those corrective actions before further flight after the proposed inspection.

Where the service bulletin specifies contacting the manufacturer for a grace period assessment after replacing the trunnion or flap, this proposed AD would instead require contacting the FAA or DGAC for the grace period assessment.

Clarification of Inspection Terminology

''Visually examine'' as specified in Airbus Service Bulletin A320–57–1133 is referred to as a ''detailed inspection'' in this proposed AD. We have included the definition for a detailed inspection in a note in the proposed AD.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Change to Existing AD

This proposed AD would retain certain requirements of AD 2000–24–02. Since AD 2000–24–02 was issued, the AD format has been revised, and certain paragraphs have been rearranged. Also, the requirements in paragraphs (a) through (e) of AD 2000–24–02 have not been retained in this proposed AD. As a result, the requirement in paragraph (f) of AD 2000–24–02 corresponds to the requirement of paragraph (f) in this proposed AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Terminating modification (required by AD 2000–24–02).	14	$65	Provided by manufacturer.	$910	719	$654,290.
Detailed inspection (new proposed action).	2	65	None	$130, per inspection cycle.	719	$93,470, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12009 (65 FR 75603, December 4, 2000) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–23143; Directorate Identifier 2005–NM–177–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 3, 2006.

Affected ADs

(b) This AD supersedes AD 2000–24–02.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Model A318–111 and –112 airplanes on which Airbus Modification 26495 has been incorporated in production.

(2) All Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model

A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes.

Unsafe Condition

(d) This AD results from reports of wear damage to the inboard flap trunnions after incorporation of the terminating modification. We are issuing this AD to detect and correct wear of the inboard flap trunnions, which could lead to loss of flap surface control and consequently result in the flap detaching from the airplane. A detached flap could result in damage to the tail of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2000–24–02

Modification

(f) For Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes; except those on which Airbus Modification 26495 has been accomplished in production: Within 18 months after January 8, 2001 (the effective date of AD 2000–24–02), modify the sliding panel driving mechanism of the flap drive trunnions, in accordance with Airbus Service Bulletin A320–27–1117, Revision 02, dated January 18, 2000.

Note 1: Accomplishment of the modification required by paragraph (f) of this AD before January 8, 2001, in accordance with Airbus Service Bulletin A320–27–1117, dated July 31, 1997; or Revision 01, dated June 25, 1999, is acceptable for compliance with that paragraph.

Requirements of this AD

Detailed Inspections

(g) For all airplanes: At the latest of the applicable compliance times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, do a detailed inspection of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and do any corrective actions as applicable, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–57–1133, dated July 28, 2005; except as provided by paragraph (h) of this AD. Any corrective actions must be done at the compliance times specified in Figures 5 and 6, as applicable, of the service bulletin; except as provided by paragraph (i) of this AD. Repeat the detailed inspections thereafter at intervals not to exceed 4,000 flight hours.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(1) Before accumulating 4,000 total flight hours on the inboard flap trunnion since new.

(2) Within 4,000 flight hours after accomplishing paragraph (f) of this AD.

(3) Within 600 flight hours after the effective date of this AD.

No Reporting Requirement

(h) Although Airbus Service Bulletin A320–57–1133, dated July 28, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Compliance Times

(i) Where Airbus Service Bulletin A320–57–1133, dated July 28, 2005, specifies replacing the sliding panel at the next opportunity, replace it within 600 flight hours after the inspection required by paragraph (g) of this AD. If the trunnion is found damaged during any inspection required by paragraph (g) of this AD, do the corrective actions specified in the service bulletin before further flight. Where the service bulletin specifies contacting the manufacturer for a grace period assessment after replacing the trunnion or flap, contact the FAA or Direction Générale de l'Aviation Civile (DGAC) for the grace period assessment.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) French airworthiness directive F–2005–139, dated August 3, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on November 18, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23514 Filed 11–30–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23142; Directorate Identifier 2005–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–131, –132, and –133; A320–232 and –233; and A321–131 and –231 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A319–131, –132, and –133; A320–232 and –233; and A321–131 and –231 airplanes. This proposed AD would require inspecting for cracks or failure of the primary load path components of the engine forward mount, and corrective action if necessary. This proposed AD also would require removing, re-installing, and re-torquing the attachment bolts for the secondary load path. This proposed AD results from a report that, during modification of certain engine forward mount assemblies of the left and right engines done at an engine shop visit, an incorrect torque was applied to the attachment bolts. We are proposing this AD to prevent structural failure of the secondary load path of the forward engine mount, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by January 3, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–23142; Directorate Identifier 2005–NM–154–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A319–131, –132, and –133 airplanes; Model A320–232 and –233 airplanes; and Model A321–131 and –231 airplanes. The DGAC advises that, during modification of certain forward engine mount assemblies of the left and right engines done at an engine shop visit, an incorrect torque was applied to the attachment bolts. Lower torque values used on the bolts reduce the bolt fatigue life. The bolts are part of a secondary thrust load path that is only active upon failure of the primary thrust load path. These conditions, if not corrected, could result in separation of the engine from the airplane.

Other Relevant Rulemaking

On November 30, 1999, we issued AD 99–25–10, amendment 39–11453 (64 FR 68623, December 8, 1999), for certain Airbus Model A319, A320, and A321 series airplanes. That AD requires a one-time inspection of the forward engine mount assembly of the left and right engines to verify that the part number on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary. That AD was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We issued that AD to prevent structural failure of the secondary load path of the forward engine mount, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane. When accomplishing the actions required by that AD during an engine shop visit, an incorrect torque was applied to the attachment bolts.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A320–71A1036, Revision 1, dated June 28, 2005. The AOT describes procedures for accomplishing a detailed inspection for cracks or failure of the primary load path components of the engine forward mount, and performing corrective action if necessary. The corrective action involves replacing defective components with new components. The AOT also describes procedures for removing, re-installing, and re-torquing the attachment bolts for the secondary load path. The AOT recommends reporting inspection results to the manufacturer.

The DGAC mandated the service information and issued French emergency airworthiness directive UF–2005–117, dated June 29, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Among French Airworthiness Directive, Proposed AD, and AOT.''

Differences Among French Emergency Airworthiness Directive, Proposed AD, and AOT

Although the DGAC issued an emergency airworthiness directive to address the unsafe condition of incorrect torque applied to the attachment bolts, we have determined that issuing an immediately adopted rule is not necessary. We have received confirmation that the affected U.S. fleet has accomplished the inspection of the primary load path in accordance with the AOT specified in the proposed AD. Therefore, we have determined that issuing a notice of proposed rulemaking will ensure that the identified unsafe condition is properly addressed.

Although the AOT referenced in this proposed AD recommends that inspection results be reported to the manufacturer, this proposed AD does not include that requirement.

Costs of Compliance

This proposed AD would affect about 131 airplanes of U.S. registry.

The proposed inspection would take about 2 work hours per airplane (1 work hour per engine), at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $17,030, or $130 per airplane.

The proposed removal, re-installation, and re-torquing would take about 8 work hours per airplane (4 work hours per engine), at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed adjustments for U.S. operators is $68,120, or $520 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–23142; Directorate Identifier 2005–NM–154–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319–131, –132, and –133 airplanes; Model A320–232 and –233 airplanes; and Model A321–131 and –231 airplanes; certificated in any category; as identified in Airbus All Operators Telex (AOT) A320–71A1036, Revision 1, dated June 28, 2005.

Unsafe Condition

(d) This AD results from a report that, during modification of certain engine forward mount assemblies of the left and right engines done at an engine shop visit, an incorrect torque was applied to the attachment bolts. We are issuing this AD to prevent structural failure of the secondary load path of the forward engine mount, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

Compliance

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

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

Inspection and Corrective Action

(f) Perform a detailed inspection for cracks or failure of the primary load path components of the engine forward mount by doing all the applicable actions in accordance with the procedures in AOT A320–71A1036, Revision 1, dated June 28, 2005. Do any corrective action before further flight in accordance with the procedures in the AOT. Perform the actions at the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model A321–131 and –231 airplanes: Do the inspection within 5 days after the effective date of this AD.

(2) For Model A319–131, –132, and –133 airplanes: Do the inspection within 10 days after the effective date of this AD.

(g) For all airplanes: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, remove, re-install, and re-torque each of the attachment bolts of the engine forward mount assembly in accordance with the procedures in AOT A320–71A1036, Revision 1, dated June 28, 2005.

(1) If the inspection specified in paragraph (f) of this AD was accomplished after the effective date of this AD: Do the actions within 2,250 flight cycles after accomplishing the inspection.

(2) If the inspection specified in paragraph (f) of this AD was accomplished before the effective date of this AD: Do the actions within 2,250 flight cycles after the effective date of this AD.

Actions Accomplished Previously

(h) Inspections, adjustments or repairs done before the effective date of this AD in accordance with the procedures in AOT A320–71A1036, dated June 27, 2005, are acceptable for compliance with the corresponding actions required by this AD.

No Reporting Required

(i) Although AOT A320–71A1036, Revision 1, dated June 28, 2005, recommends that inspection results be reported to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(k) French emergency airworthiness directive UF–2005–117, dated June 29, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on November 18, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23513 Filed 11–30–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM06–5–000]

Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates

November 21, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations regarding the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce. Specifically, the Commission proposes to repeal sections of the Commission's regulations pertaining to codes of conduct with respect to certain sales of natural gas once we have issued final regulations implementing the anti-manipulation provisions of the Energy Policy Act of 2005 and have incorporated other aspects of such regulations in appropriate Commission orders, rules and regulations. The Commission seeks public comment on whether such regulations should be repealed as proposed herein.

DATES: Comments are due January 3, 2006. Reply comments are due January 17, 2006.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: Frank Karabetsos, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8133, *Frank.Karabetsos@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Commission seeks comments on whether to repeal sections 284.288 and 284.403 of its regulations,[1] which requires that pipelines and all sellers for resale adhere to a code of conduct with respect to certain sales of natural gas, as implemented pursuant to Order No. 644.[2] The central purpose of sections 284.288 and 284.403 of the Commission's regulations is to prohibit market manipulation. In the Energy Policy Act of 2005 (EPAct 2005),[3] Congress enacted new section 4A of the Natural Gas Act (NGA) which specifically bars manipulation in connection with the purchase or sale of natural gas or transportation services and authorizes the Commission to promulgate rules and regulations prohibiting market manipulation. In a Notice of Proposed Rulemaking issued October 20, 2005, the Commission has proposed rules to implement the new statutory anti-manipulation provisions.[4] We propose repealing sections 284.288 and 284.403 of the Commission's regulations once we have issued final regulations implementing the anti-manipulation provisions of EPAct 2005 and have incorporated other aspects of sections 284.288 and 284.403 of the Commission's regulations in appropriate Commission orders, rules, and regulations. We are also requesting comment on whether sections 284.288 and 284.403 should be repealed prospectively.

Background

2. On November 17, 2003, acting pursuant to section 7 of the NGA, we issued a final rule, Order No. 644, amending blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and blanket marketing certificates held by persons making sales for resale of natural gas at negotiated rates in interstate commerce. This rule requires that pipelines that provide unbundled natural gas sales service and all sellers of natural gas for resale adhere to a code of conduct with respect to natural gas sales. The Commission determined that in order to protect and maintain the competitive natural gas market and to continue its light-handed regulation of the gas sales within its jurisdiction, it was necessary to place additional conditions on its grant of market-based sales certificates. In formulating such conditions to the market-based rate certificates the Commission was fulfilling its obligation to appropriately monitor markets and to ensure that market-based rates remain within the zone of reasonableness required by the NGA.[5]

3. Under sections 284.288(a) and 284.403(a) of the Commission's regulations, a pipeline providing unbundled natural gas sales service under section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to section 284.402, ''is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas.'' Prohibited actions or transactions include wash trades and collusion for the purpose of market manipulation.[6]

4. Sections 284.288(b) and 284.403(b) deal with reporting of transaction information to price index publishers. They require that if a seller reports transaction data, the data be accurate and factual, and not knowingly false or misleading, and be reported in accordance with the Commission's Policy Statement on price indices.[7] Sections 284.288(b) and 284.403(b) also require that sellers notify the Commission of whether they report transaction data to price index publishers in accordance with the Policy Statement, and to update any changes in their reporting status.

5. Sections 284.288(c) and 284.403(c) require that sellers retain for a minimum three year period all data and information upon which they billed the prices charged for natural gas sales made under their market-based sales certificates or in transactions the prices of which were reported to price index publishers.

6. Sections 284.288(d)–(e) and 284.403(d)–(e) of the Commission's regulations are largely procedural in nature. Specifically, sections 284.288(d) and 284.403(d) deal with remedies for violations of the codes of conduct requirements set forth in preceding paragraphs (a) through (c) of sections 284.288 and 284.403. Sections 284.288(e) and 284.403(e) deal with time limits on complaints and Commission enforcement of the codes of conduct requirements.

7. At the same time that Order No. 644 was adopted for pipelines that provide unbundled natural gas sales service and holders of blanket certificate authority that make sales for resale of natural gas, the Commission also issued an order to require wholesale sellers of electricity at market-based rates to

[1] 18 CFR 284.288 and 284.403 (2005). Sections 284.288 and 284.403 of the Commission's regulations are provided in Attachment A hereto.

[2] *Amendments to Blanket Sales Certificates, Order No. 644,* 105 FERC ¶ 61,217 (2003), *reh'g denied* 107 FERC ¶ 61,174; 68 FR 66,323 (Nov. 26, 2003); 18 CFR 284.288(a) and 284.403(a) (2003) (Order No. 644). Order No. 644 is currently on appeal. *See Cinergy Marketing & Trading, L.P.* v. *FERC,* No. 04–1168 *et al.* (D.C. Cir., appeal filed April 28, 2004).

[3] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[4] *Prohibition of Energy Market Manipulation,* 113 FERC ¶ 61,067 (2005) (Prohibition of Energy Market Manipulation NOPR).

[5] 105 FERC ¶ 61,217 at P 91 (2003).

[6] 18 CFR 284.288(a)(1)–(2) and 284.403(a)(1)–(2) (2005).

[7] *Policy Statement on Natural Gas and Electric Price Indices,* 104 FERC ¶ 61,121 (2003).

adhere to certain behavioral rules when making sales of electricity.[8]

EPAct 2005 and Proposed New Rules

8. As noted, section 315 of EPAct 2005 amended the NGA to add a new section 4A, which prohibits the use or employment of ''any manipulative or deceptive device or contrivance'' in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission. In order to implement the anti-manipulation provisions of NGA section 4A, we issued the Prohibition of Energy Market Manipulation NOPR, proposing new regulations (proposed Part 159 regulations) to make it unlawful for any entity, directly or indirectly, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission (1) to use or employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.[9]

9. In the Prohibition of Energy Market Manipulation NOPR, we recognized that sections 284.288(a) and 284.403(a) of the Commission's regulations also prohibit manipulative conduct. We noted that conduct that violates sections 284.288(a) or 284.403(a) and the proposed Part 159 regulations will be treated as one violation of anti-manipulation rules, and that we will not apply duplicative penalties for the same conduct in the event that conduct were to violate both sections 284.288(a) or 284.403(a) and the proposed Part 159 regulations. We also indicated that we would seek comment on whether sections 284.288(a) and 284.403(a) of the Commission's regulations should be revised or repealed in light of the proposed Part 159 regulations.

Discussion

10. Our goal is to provide firm but fair enforcement of the statutes, orders, rules, and regulations we administer. To do so, it is important that our rules be as clear as possible so that market participants and entities subject to our rules and regulations understand what conduct is proscribed and can act accordingly.[10] We propose to repeal sections 284.288 and 284.403 in light of the proposed Part 159 regulations to implement the new anti-manipulation provisions contained in section 4A of the NGA and of the Commission's other rules and regulations.[11] All market participants subject to sections 284.288 and 284.403 are ''entities'' subject to EPAct 2005 and therefore will be subject to the new regulations prohibiting manipulation, deceit, and fraud in connection with wholesale natural gas transactions. Other aspects of sections 284.288 and 284.403 of the Commission's regulations either reflect existing requirements or can be incorporated into other rules, making it unnecessary to retain the separate list of rules in sections 284.288(a)–(e) and 284.403(a)–(e) of the Commission's regulations.

11. We think that repeal of sections 284.288 and 284.403 of the Commission's regulations will simplify the Commission's rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry. At the same time, we think that the behaviors described in sections 284.288 and 284.403 of the Commission's regulations will still be addressed through other rules and regulations. We emphasize our belief that repeal of sections 284.288 and 284.403 of the Commission's regulations is intended to take into account the passage of EPAct 2005, which has provided the Commission with expanded anti-manipulation authority, and to simplify and streamline the rules and regulations sellers must follow, not to eliminate beneficial rules governing market behavior.

12. The heart of sections 284.288 and 284.403 of the Commission's regulations is subparagraph (a), prohibiting manipulation. We recognize that there is overlap between sections 284.288(a) and 284.403(a) of the Commission's regulations and the proposed Part 159 regulations. We are concerned that this could cause unnecessary confusion and regulatory uncertainty once the proposed Part 159 regulations are in place. It is our view that the scope of the new statutory prohibition on manipulation and the reach of the proposed Part 159 regulations eliminate the need for sections 284.288(a) and 284.403(a) of the Commission's regulations.

13. We recognize there are some differences, but the differences do not seem to require keeping sections 284.288 and 284.403 of the Commission's regulations once the new Part 159 regulations are final.[12] For instance, there is a difference in the standard of proof between sections 284.288(a) and 284.403(a) of the Commission's regulations and the proposed Part 159 regulations. In new section 4A of the NGA, Congress used the terms ''manipulative or deceptive device or contrivance'' and directed that they be given the same meaning as used in section 10b of the Securities Exchange Act of 1934.[13]

Those terms have been interpreted to require a showing of scienter, that is, an intent to deceive, manipulate or defraud.[14] In other words, knowing, intentional, or reckless conduct is proscribed.[15] In contrast, sections 284.288(a) and 284.403(a) of the Commission's regulations do not require a showing of scienter, as they prohibit actions or transactions that ''foreseeably'' could manipulate market prices, conditions, or rules. The ''foreseeably'' requirement has generated controversy and uncertainty, however. We believe the use of a scienter standard, given the precedent in other regulatory contexts, will draw a clearer line between acceptable and prohibited behavior.

14. We also note that the new authority granted to the Commission in section 4A of the NGA and our proposed Part 159 regulations governs more transactions and more entities

[8] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* ''Order Amending Market-Based Rate Tariffs and Authorizations,'' 105 FERC ¶ 61,218 (2003), *reh'g denied,* 107 FERC ¶ 61,175 (2004) at Appendix A.

[9] The proposed Part 159 regulations are also provided in Attachment A hereto.

[10] As discussed in the Prohibition of Energy Market Manipulation NOPR (at P 14), section 4A of the NGA, as added by section 315 of EPAct 2005, and the proposed implementing rules are patterned after section 10(b) of the Securities Exchange Act of 1934 and related regulations, which provides a level of certainty as to how the proposed rules will operate that is not typically available.

[11] Concurrently with this NOPR, we are issuing an order pursuant to section 206 of the Federal Power Act (FPA) in Docket No. EL06–16–000 to consider similar changes to the Market Behavior Rules, which are currently included in all public utility sellers' market-based rate tariffs and authorizations.

[12] The timing of proposed repeal is important. We do not intend to leave any gap in our regulations prohibiting manipulation of energy markets or other requirements of sections 284.288 and 284.403 of the Commission's regulations.

[13] 15 U.S.C. 78j(b) (2005).

[14] *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 201 (1976).

[15] *Sundstrand Corp.* v. *Sun Chemical Corp.,* 553 F.2d 1033 (7th Cir. 1977), *cert. denied,* 434 U.S. 875 (1977) (defining recklessness in the section 10(b) and Rule 10b–5 context as ''a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.''); *accord In Re Silicon Graphics Securities Litigation,* 183 F.3d 970, 977 (9th Cir. 1999).

than is the case for sections 284.288(a) and 284.403(a) of the Commission's regulations, which covers only certain natural gas sellers. More precisely, Congress made the anti-manipulation provisions of section 315 applicable to ''any entity'' and in connection with both the purchase and sale of natural gas, as well as the purchase or sale of transportation services subject to our jurisdiction. Sections 284.288(a) and 284.403(a) of the Commission's regulations, on the other hand, are applicable only to a pipeline providing unbundled natural gas sales service under section 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to section 284.402, a smaller subset of the entities and types of transactions than those subject to EPAct 2005 section 315 prohibition of manipulation.

15. Additionally, it is our view that it is not necessary to retain the explicit prohibitions against certain conduct set forth in sections 284.288(a)(1)–(2) and 284.403(a)(1)–(2) (wash trades and collusion for the purpose of market manipulation). These are examples of prohibited manipulation, both of which are manipulative or deceptive devices or contrivances. Thus, both would be barred by the proposed Part 159 regulations. For example, wash trades would be devices or schemes to defraud (proposed section 159.1(a)(1)). It is our view that market participants are on notice that wash trades and colluding to manipulate are prohibited activities under the proposed Part 159 regulations, subject to penalty and remedial action.

16. Turning to the other subparagraphs of sections 284.288 and 284.403 of the Commission's regulations, it appears that the requirements imposed there either are duplicative of other rules or regulations or can be incorporated into other rules of general applicability. For instance, the first part of sections 284.288(b) and 284.403(b), requiring sellers to provide accurate data to price index publishers if the seller is reporting transactions to such publishers, calls for accurate and truthful representations. It is our view that failure to do so would be a violation of the proposed Part 159 regulations.

Sections 284.288(b) and 284.403(b) of the Commission's regulations also include a requirement that sellers notify the Commission of their price reporting status and any changes in that status. This does not appear elsewhere in our current or proposed regulations. We note, however, that price transparency is also addressed by EPAct 2005, which adds new section 23 to the NGA. Section 23 gives us authority to promulgate rules and regulations necessary to facilitate price transparency. We intend to address market transparency issues in a separate proceeding, and anticipate that rules adopted in that proceeding will address the sections 284.288(b) and 284.403(b) requirements for providing transaction information to price index publishers and informing the Commission of price reporting status.

17. Sections 284.288(c) and 284.403(c) requires sellers to maintain certain records for a period of three years to reconstruct prices charged for natural gas. The Commission has a number of specific record retention requirements applicable to natural gas companies subject to the jurisdiction of the Commission in Part 225 of our regulations.[16] In many cases, these requirements are for time periods longer than three years. The Part 225 requirements are largely related to cost-of-service rate requirements, however. We believe it is important that all pipelines providing unbundled natural gas sales service and all persons holding blanket certificates making natural gas sales for resale in interstate commerce retain the data and information described in sections 284.288(c) and 284.403(c) of the Commission's regulations. We intend to address this retention requirement in the context of our rules under the NGA, such that there will be no gap in the retention requirement. We believe that doing so would eliminate the need to retain sections 284.288(c) and 284.403(c) of the Commission's regulations.

18. If the Commission decides to repeal sections 284.288(a)–(c) and 284.403(a)–(c) of its regulations, it is the Commission's view that sections 284.288(d) and 284.403(d) of the Commissions' regulations, dealing with remedies, and sections 284.288(e) and 284.404(e), dealing with time limits on complaints and Commission enforcement, are largely procedural and would become superfluous without the underlying operative paragraphs and therefore should be deleted.

19. In addition to simplifying our codes of conduct rules, avoiding confusion, and providing more regulatory certainty, it is also our view that a smooth transition from the existing codes of conduct regulations to the proposed Part 159 regulations and other rules and regulations achieves our original goal in adopting sections 284.288 and 284.403 of the Commission's regulations, that is, to fulfill our obligation to ensure that market-based rates remain within the zone of reasonableness required by the NGA. In EPAct 2005, Congress has provided broad and strong prohibitions of market manipulation, and reliance on rules implementing these statutory prohibitions will likewise assure that wholesale markets reflect competitive forces and produce just and reasonable rates.

20. We seek comment on whether sections 284.288 and 284.403 of the Commission's regulations should be repealed prospectively, including responses to the following questions:

A. Are there any aspects of sections 284.288 and 284.403 of the Commission's regulations that should be retained, or can all substantive provisions of sections 284.288 and 284.403 of the Commission's regulations be reflected in the proposed Part 159 regulations and other Commission rules and regulations?

B. Is there a need or basis for retaining existing sections 284.288(a) and 284.403(a) of the Commission's regulations in light of the anti-manipulation provisions set forth in the proposed Part 159 regulations?

C. Should the affirmative defense of ''legitimate business purpose'' in existing sections 284.288(a) and 284.403(a) of the Commission's regulations be retained in any form?

D. Is the requirement of sections 284.288(b) and 284.403(b) of the Commission's regulations to report transaction information accurately, to the extent a seller reports such information to price index publishers, necessary in light of the proposed Part 159 regulations?

21. We encourage responses to the specific questions above as well as additional relevant comments regarding whether sections 284.288 and 284.403 of the Commission's regulations should be repealed.

Information Collection Statement

22. This proposed rule implements the existing requirements as set forth in section 4A of the NGA and does not include new information requirements under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Environmental Analysis

23. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[17] The Commission has

[16] 18 CFR Part 225 (2005).

[17] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897

Continued

categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[18] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[19] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

Regulatory Flexibility Act

24. The Regulatory Flexibility Act of 1980 (RFA)[20] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[21] The Commission is not required to make such analyses if a rule would not have such an effect.

25. The Commission does not believe that this proposed rule would have such an impact on small entities. The proposed rule merely repeals sections 284.288 and 284.403 of the Commission's regulations. Therefore, the Commission certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

Comment Procedures

26. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 3, 2006. Reply comments are due January 17, 2006. Comments must refer to Docket No. RM06–5–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

27. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

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

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

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

List of Subjects in 18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, *Code of Federal Regulations*, as follows.

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

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

§ 284.288 [Removed]

2. Remove § 284.288.

§ 284.403 [Removed]

3. Remove § 284.403.

[FR Doc. 05–23405 Filed 11–30–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8000–1]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed rule.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources by the State of California and South Coast Air Quality Management District (South Coast AQMD). The intended effect of approving the OCS requirements for the State of California and South Coast AQMD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before January 3, 2006.

ADDRESSES: Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

(Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[18] 18 CFR 380.4 (2005).

[19] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2005).

[20] 5 U.S.C. 601–12 (2000).

[21] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (2004) (Section 22, Utilities, North American Industry Classification System, NAICS).

1. *Agency Web site: http://docket.epa.gov/edocket/.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

3. *E-mail: steckel.andrew@epa.gov.*

4. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket includes changes and may be made available online at *http://docket.epa.gov/edocket/*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statue. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are''anonymous access'' systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/edocket/* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Why Is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of requirements submitted by the State of California and South Coast AQMD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What Criteria Were Used To Evaluate Rules Submitted To Update 40 CFR Part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What Requirements Were Submitted To Update 40 CFR Part 55?

1. After review of the requirements submitted by the State of California against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following State of California requirements applicable to OCS sources:

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

Requirement #	Name	Adoption or amended date
17 § 93115	Airborne Toxic Control Measure for Stationary Compression Ignition Engines	2/26/04

2. After review of the requirements submitted by the South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following District requirements applicable to OCS sources:

Rule #	Name	Adoption or amended date
102	Definition of Terms	12/3/04
201	Permit to Construct	12/3/04
201.1	Permit Conditions in Federally Issued Permits to Construct	12/3/04
202	Temporary Permit to Operate	12/3/04
203	Permit to Operate	12/3/04
219	Equipment Not Requiring a Written Permit Pursuant to Regulation III	12/3/04
301	Permitting and Associated Fees (except (3) (7) andTable IV)	6/3/05
304	Equipment Materials, and Ambient Air Analyses	6/3/05
304.1	Analyses Fees	6/3/05
306	Plans Fees	6/3/05
309	Fees for Regulation XVI	6/3/05
403	Fugitive Dust	6/3/05
463	Organic Liquid Storage	5/6/05
1110.1	Emissions from Stationary Internal CombustionEngines	6/3/05
1110.2	Emissions from Gaseous- and Liquid-Fueled Engines	6/3/05
1113	Architectural Coatings	7/9/04
1121	Control Of Nitrogen Oxides from Residential Type,Natural Gas-Fired Water Heaters	9/3/05
1122	Solvent Degreasers	10/1/04
1132	Further Control of VOC Emissions from High EmittingSpray Booth Facilities	5/7/04
1146.2	Emissions of Oxides of Nitrogen from Large WaterHeaters and Small Boilers	1/7/05
1162	Polyester Resin Operations	7/9/04
1168	Adhesive and Sealant Applications	1/7/05
1171	Solvent Cleaning Operations	5/6/05
2000	General	5/6/05
2001	Applicability	5/6/05
2002	Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (Sox)	1/7/05
2005	New Source Review for RECLAIM (except (i))	5/6/05
2007	Trading Requirements	5/6/05
2009	Compliance Plan for Power Producing Facilities	1/7/05
2010	Administrative Remedies and Sanctions	1/7/05
2011	Requirements for Monitoring, Reporting, andRecordkeeping for Oxides of Sulfur (Sox) Emissions	5/6/05
2012	Requirements for Monitoring, Reporting, andRecordkeeping for Oxides of Nitrogen Emissions	5/6/05
2015	Backstop Measures (except (b)(l)(G) and (b)(3)(B)	6/4/04
1470	Requirements for Stationary Diesel-Fueled InternalCombustion and Other Compression Ignition	3/4/05

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small

governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: November 1, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40 Chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraphs (e)(3)(i)(A) and (e)(3)(ii)(G) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) *State of California Requirements Applicable to OCS Sources.*

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to Part 55 is amended by revising paragraphs (a)(1) and (b)(7) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(a) State requirements.

(1) The following requirements are contained in State of California Requirements applicable to OCS Sources:

Barclays California Code of Regulations

The following sections of Title 17 Subchapter 6:

17 § 92000—Definitions (Adopted 5/31/91)
17 § 92100—Scope and Policy (Adopted 5/31/91)
17 § 92200—Visible Emission Standards (Adopted 5/31/91)
17 § 92210—Nuisance Prohibition (Adopted 5/31/91)
17 § 92220—Compliance with Performance Standards (Adopted 5/31/91)
17 § 92400—Visible Evaluation Techniques (Adopted 5/31/91)
17 § 92500—General Provisions (Adopted 5/31/91)
17 § 92510—Pavement Marking (Adopted 5/31/91)
17 § 92520—Stucco and Concrete (Adopted 5/31/91)
17 § 92530—Certified Abrasive (Adopted 5/31/91)
17 § 92540—Stucco and Concrete (Adopted 5/31/91)
17 § 93115—Airborne Toxic Control Measure for Stationary Compression Ignition Engines (Adopted 2/26/04)

Health and Safety Code

The following section of Division 26, Part 4, Chapter 4, Article 1:

Health and Safety Code § 42301.13 of seq. Stationary sources: demolition or removal (chaptered 7/25/96)

(b) Local requirements.

* * * * *

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III), February 2005:

Rule 102—Definition of Terms (Amended 12/3/04)
Rule 103—Definition of Geographical Areas (Adopted 1/9/76)
Rule 104—Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108—Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109—Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112—Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 118—Emergencies (Adopted 12/7/95)
Rule 201—Permit to Construct (Amended 12/3/04)
Rule 201.1—Permit Conditions in Federally Issued Permits to Construct (Amended 12/3/04)
Rule 202—Temporary Permit to Operate (Amended 12/3/04)
Rule 203—Permit to Operate (Amended 12/3/04)
Rule 204—Permit Conditions (Adopted 3/6/92)
Rule 205—Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206—Posting of Permit to Operate (Adopted 1/5/90)
Rule 207—Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208—Permit and Burn Authorization for Open Burning (amended 12/21/01)
Rule 209—Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210—Applications (Adopted 1/5/90)
Rule 212—Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214—Denial of Permits (Adopted 1/5/90)
Rule 217—Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218—Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1—Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)
Rule 218.1—Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219—Equipment Not Requiring a Written Permit Pursuant to Regulation II (Amended 12/3/04)
Rule 220—Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221—Plans (Adopted 1/4/85)
Rule 301—Permitting and Associated Fees (Amended 6/3/05) except (e)(7)and Table IV
Rule 304—Equipment, Materials, and Ambient Air Analyses (Amended 6/3/05)
Rule 304.1—Analyses Fees (Amended 6/3/05)
Rule 305—Fees for Acid Deposition (Adopted 10/4/91)
Rule 306—Plan Fees (Amended 6/3/05)
Rule 309—Fees for Regulation XVI Plans (Amended 6/3/05)
Rule 401—Visible Emissions (Adopted 11/9/01)
Rule 403—Fugitive Dust (Amended 6/3/05)
Rule 404—Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405—Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407—Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408—Circumvention (Adopted 5/7/76)
Rule 409—Combustion Contaminants (Adopted 8/7/81)
Rule 429—Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430—Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1—Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2—Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3—Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441—Research Operations (Adopted 5/7/76)
Rule 442—Usage of Solvents (Adopted 12/15/00)
Rule 444—Open Burning (Adopted 12/21/01)
Rule 463—Organic Liquid Storage (Adopted 5/6/05)
Rule 465—Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468—Sulfur Recovery Units (Amended 10/8/76)
Rule 473—Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474—Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/4/81)
Rule 475—Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476—Steam Generating Equipment (Adopted 10/8/76)
Rule 480—Natural Gas Fired Control Devices (Adopted 10/7/77)Addendum to Regulation IV (Effective 1977)
Rule 518—Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1—Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2—Federal Alternative Operating Conditions (Adopted 12/21/01)
Rule 701—Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702—Definitions (Adopted 7/11/80)
Rule 708—Plans (Rescinded 9/8/95)
Regulation IX—New Source Performance Standards (Adopted 5/11/01)
Regulation X—National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1105.1—Reduction of PM_{10} and Ammonia Emissions From Fluid Catalytic Crackling Units (Adopted 11/7/03)
Rule 1106—Marine Coatings Operations (Adopted 1/13/95)
Rule 1107—Coating of Metal Parts and Products (Adopted 11/9/01)
Rule 1109—Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110—Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1—Emissions from Stationary Internal Combustion Engines (Amended 6/3/05)
Rule 1110.2—Emissions from Gaseous- and Liquid Fueled Internal Combustion Engines (Amended 6/3/05)
Rule 1113—Architectural Coatings (Amended 7/9/04)
Rule 1116.1—Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121—Control of Nitrogen Oxides from Residential—Type Natural Gas—Fired Water Heaters (Amended 9/3/04)
Rule 1122—Solvent Degreasers (Amended 10/1/04)
Rule 1123—Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125—Metal Containers, Closure, and Coil Coating Operations (1/13/95)
Rule 1129—Aerosol Coatings (Adopted 3/8/96)
Rule 1132—Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Amended 5/7/04)
Rule 1134—Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136—Wood Products Coatings (Adopted 6/14/96)
Rule 1137—PM_{10} Emission Reductions from Woodworking Operations (Adopted 2/01/02)
Rule 1140—Abrasive Blasting (Adopted 8/2/85)
Rule 1142—Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146—Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1—Emission of Oxides of Nitrogen from Small Industrial, Institutional, and

Commercial Boilers, steam Generators, and Process Heaters(Adopted 5/13/94)
Rule 1146.2—Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Amended 1/17/05)
Rule 1148—Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149—Storage Tank Degassing (Adopted 7/14/95)
Rule 1162—Polyester Resin Operations (Amended 7/9/04)
Rule 1168—Adhesive and Sealant Applications (Amended 1/7/05)
Rule 1171—Solvent Cleaning Operations (Amended 5/6/05)
Rule 1173—Fugitive Emissions of Volatile Organic Compounds (Adopted 12/06/02)
Rule 1176—VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1178—Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301—General (Adopted 12/7/95)
Rule 1302—Definitions (Adopted 12/06/02)
Rule 1303—Requirements (Adopted 12/06/02)
Rule 1304—Exemptions (Adopted 6/14/96)
Rule 1306—Emission Calculations (Adopted 12/06/02)
Rule 1313—Permits to Operate (Adopted 12/7/95)
Rule 1403—Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1470—Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines (Adopted 3/4/05)
Rule 1605—Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610—Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612—Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1—Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620—Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701—General (Adopted 8/13/99)
Rule 1702—Definitions (Adopted 8/13/99)
Rule 1703—PSD Analysis (Adopted 10/7/88)
Rule 1704—Exemptions (Adopted 8/13/99)
Rule 1706—Emission Calculations (Adopted 8/13/99)
Rule 1713—Source Obligation (Adopted 10/7/88)
Regulation XVII—Appendix (effective 1977)
Rule 1901—General Conformity (Adopted 9/9/94)
Rule 2000—General (Amended 5/6/05)
Rule 2001—Applicability (Amended 5/6/05)
Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Amended 1/7/05)
Rule 2004—Requirements (Adopted 5/11/01) except (l)
Rule 2005—New Source Review for RECLAIM (Amended 4/20/01) except (i)
Rule 2006—Permits (Adopted 5/11/01)
Rule 2007—Trading Requirements (Amended 5/6/05)
Rule 2008—Mobile Source Credits (Adopted 10/15/93)
Rule 2009—Compliance Plan for Power Producing Facilities (Adopted 1/7/05)
Rule 2010—Administrative Remedies and Sanctions (Amended 1/7/05)
Rule 2011—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Amended 5/6/05)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 5/6/05)
Rule 2012—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Amended 5/6/05)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 5/6/05)
Rule 2015—Backstop Provisions (Amended 6/4/04) except (b)(1)(G) and (b)(3)(B)
Rule 2020—RECLAIM Reserve (Adopted 5/11/01)
Rule 2100—Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506—Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX—Title V Permits
Rule 3000—General (Adopted 11/14/97)
Rule 3001—Applicability (Adopted 11/14/97)
Rule 3002—Requirements (Adopted 11/14/97)
Rule 3003—Applications (Adopted 3/16/01)
Rule 3004—Permit Types and Content (Adopted 12/12/97)
Rule 3005—Permit Revisions (Adopted 3/16/01)
Rule 3006—Public Participation (Adopted 11/14/97)
Rule 3007—Effect of Permit (Adopted 10/8/93)
Rule 3008—Potential To Emit Limitations (3/16/01)
XXXI—Acid Rain Permit Program (Adopted 2/10/95)

* * * * *

[FR Doc. 05–23275 Filed 11–30–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 111805A]

Sea Turtle Requirements; Petition for Rulemaking

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

ACTION: Notice of decision on petition.

SUMMARY: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, announces its denial of a petition for rulemaking submitted by Oceana. Oceana failed to request specific and discrete actions that are properly within the scope of a rulemaking petition pursuant to the Administrative Procedure Act (APA); instead the petitioner challenged the agency's general pattern, practice, or policy. NMFS is denying the petition because the agency is already addressing aspects of the petition and has determined that additional regulations dictating the choice of method used to achieve agency goals are unwarranted at this time.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *barbara.schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Petition Request

On August 4, 2005, Oceana submitted a petition requesting NMFS to promulgate the following regulations:

(1) Conduct in-water population level assessments. The petition requests that NMFS use in-water survey techniques, such as trawl or aerial surveys to obtain supplemental population assessment information for those species for which nesting beach survey data are available among other things, Oceana cites the Turtle Expert Working Group (TEWG 2000) recommendations to improve datasets and data-gathering methods in order to support its petition;

(2) Increase observer coverage to obtain accurate information on the number of sea turtles caught in all fisheries. The petition requests that NMFS promulgate regulations that increase coverage. The petition cites the TEWG statement that observer coverage over a statistically valid portion of the fishing effort throughout the range of sea turtles is necessary to accurately estimate catch and mortality; and

(3) Establish a quantitative method for determining take limits for biological opinions. The petition claims that NMFS fails to provide a quantitative rationale for incidental take specified in its biological opinions. The petition mentions several NMFS' evaluations of quantitative models for sea turtles, including the Potential Biological Removal (PBR) model used for marine mammals. Finally, the petition refers to the August 2004 workshop convened by NMFS to develop an analytical framework for conducting jeopardy analyses under the Endangered Species Act (ESA) and identify options for assessing species' risk when data are limited. The petition requests that NMFS adopt regulations immediately to insure that biological opinions use a standardized method to make decisions.

Analysis of Petition and Decision

NMFS carefully considered the information contained in the petition and supporting documents, and made the final determinations for each portion of the petition as follows.

Petition Component (1): Conduct In-water Population Level Assessments

The petition fails to provide any new information that justifies the need for regulations that would change the agency's general pattern or practice regarding data collection and analytical methodologies. NMFS is aware of the TEWG's assessments of the current datasets and is already working to improve the empirical data that define where, how many, and at what life stage and condition sea turtles may be encountered. NMFS is also conducting and supporting in-water research in many Atlantic states, as well as conducting aerial surveys in the mid-Atlantic to better assess sea turtle distribution and abundance. NMFS has built upon the TEWG recommendations by developing a requirements plan (NOAA 2004) to improve our understanding of the status of U.S. sea turtle populations. The requirements plan reviews the current sea turtle population assessment program in terms of present research capability and capacity, and delineates the resources necessary to acquire reliable assessment information to fully address identified data requirements. NMFS has addressed, and will continue to address, both the substance of this petitioned action and the TEWG recommendations through existing research planning documents and programs. Improvement of NMFS' research program is a matter left to the agency's discretion; it is not a specific and discrete action that is properly within the scope of a petition for rulemaking pursuant to APA 5 U.S.C. 553(e). Accordingly, NMFS denies this component of the petition.

Petition Component (2): Increase Observer Coverage to Obtain Accurate Information on the Number of Sea Turtles Caught in All Fisheries

Oceana has previously petitioned NMFS to develop and implement a workplan for placing observers on enough fishing trips to provide statistically reliable bycatch estimates in all fisheries (67 FR 19154; April 18, 2002). In its response to that petition, NMFS explained that even though observers are effective in many fisheries, they may not be appropriate for all fisheries (68 FR 11501, March 11, 2003). NMFS is continuing to expand and modernize observer programs for Federal commercial fisheries. NMFS recognizes that improving monitoring programs should increase our understanding of sea turtle interactions, but constraints on agency resources and logistical difficulties (e.g., small boats) make it difficult to monitor the extent of sea turtle interactions in state-managed and recreational fisheries. NMFS is exploring various observer options that could allow for more comprehensive, longer term monitoring of sea turtle-fishery interactions across fishing sectors and jurisdictional boundaries, but this on going effort is still in its early stages. Options may include placing observers in fisheries of concern pursuant to authority under the Endangered Species Act (ESA). In light of NMFS' previous denial of a substantially similar petitioned action and the agency's ongoing efforts to improve observer coverage, granting this petitioned action is unwarranted at this time.

Petition Component (3): Establish a New, Uniform Quantitative Method for Determining Take Limits for Biological Opinions

NMFS is interested in maintaining consist ESA section 7 jeopardy analyses in its biological opinions, while taking into account the wide variability in listed species' biology, as well as the wide variability in available information on them. To this end, NMFS convened a workshop in August 2004 as a first step in vetting the ESA section 7 biological opinion assessment framework. NMFS is still in the process of adding features such as identifying a suite of quantitative and qualitative methods for use in both data-sparse and data-rich situations, as well as testing and refining the applicability of the methods using information typical to section 7 consultations.

Any structured decision approach adopted by NMFS must, in the overall jeopardy evaluation, weigh such qualitative factors as severity of injury, significance of behavioral responses, and extent and severity of habitat disturbance. Approaches for evaluating take levels for biological opinions should contain options suitable to the varied species, available data sets, and actions under consideration. Use of any particular quantitative model such as PBR for every evaluation is inappropriate. Moreover, section 7 of the ESA and its implementing regulations do not require NMFS to estimate incidental take quantitatively. When promulgating the section 7 regulations in 1986, NMFS and the U.S. Fish and Wildlife Service explicitly declined to endorse the use of numerical estimates of incidental take in all cases. In many biological opinions, a description of the extent of take is used because the loss of habitat resulting in death or injury of individuals may have more significant adverse consequences than the direct loss of a certain number of individuals (51 FR 19953, June 3, 1986). Where Federal actions 'take' threatened or endangered species by altering the species' habitat, it is often impossible to translate the habitat lost into numerical estimates of the number of individuals taken. Consequently, numerical estimates are not appropriate to every consultation, and requiring them through rulemaking could reduce the protections listed species currently receive.

The analytical framework for evaluating take levels in biological opinions is not yet completed and has not been fully tested. NMFS has determined that it is premature to consider rulemaking to adopt the framework, or any other uniform decision approach, at this time. Thus, NMFS denies this component of the petition.

References Cited

Turtle Expert Working Group. 2000. Assessment update for the Kemp's ridley and loggerhead sea turtle populations in the western North Atlantic. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC–444, 115 pp.

NOAA Fisheries National Task Force for Improving Marine Mammal and Turtles Stock Assessment. September 2004. A Requirements Plan for Improving Understanding of the Status of U.S. Protected Species.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 28, 2005.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–23537 Filed 11–30–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 051104291–5291–01; I.D. 100405F]

50 CFR Part 648

RIN 0648–AT29

Fisheries of the Northeastern United States; Spiny Dogfish; Framework Adjustment 1

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

ACTION: Proposed rule; establishing a multiple-year specifications process.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 1 (Framework 1) to the Spiny Dogfish Fishery Management Plan (FMP) that would allow the specification of commercial quotas and other management measures for up to 5 years. The intent is to provide flexibility and efficiency to the management of the species.

DATES: Comments must be received on or before December 16, 2005.

ADDRESSES: Copies of Framework 1, the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

Written comments on the proposed rule may be sent by any of the following methods:

- Mail to the following address: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Framework 1 - Dogfish'';
- Fax to Patricia A. Kurkul at the following number: (978) 281–9135;
- E-mail to the following address: *DogFrame1@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Framework 1≥;
- Electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

This framework adjustment to the FMP is intended to improve management of the Northeast Atlantic stock of spiny dogfish (Squalus acanthias), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (Magnuson-Stevens Act). Under the existing FMP, spiny dogfish are jointly managed by both the Mid-Atlantic and the New England Fishery Management Councils (Councils). The Councils recommend annual commercial quotas and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, trip limits, or other gear restrictions), as needed, in order to ensure that the target F of 0.08 will not be exceeded. Implementing regulations for these fisheries are found at 50 CFR part 648, subpart L. Under the current FMP, the commercial quota and trip limits are specified annually and apply only to the following fishing year.

The Councils developed Framework 1, pursuant to § 648.237, in order to streamline the administrative and regulatory processes involved in specifying the fishing measures for spiny dogfish, while, at the same time, maintaining consistency with the Magnuson-Stevens Act. The proposed action would modify the FMP so that, within a given year, the Councils could specify commercial quotas and other management measures necessary to ensure that the target F of 0.08 will not be exceeded in each of the following 1 to 5 years. Implementation of Framework 1 will provide the option, not the requirement, for Councils to specify multi-year management measures. All of the environmental and regulatory review procedures currently required under the Magnuson-Stevens Act and the National Environmental Policy Act will be conducted and documented during the year in which specifications are set. These analyses will consider impacts throughout the time span for which specifications are to be set (1 to 5 years). Multi-year quotas and other management measures would not have to be constant from year to year, but would instead be based upon expectations of future stock conditions as indicated by the best scientific information available at the time the multi-year specifications are set. Updated information on the resource and the fishery would be reviewed at least every 5 years by the Mid-Atlantic Fishery Management Council's (MAFMC) Spiny Dogfish Monitoring Committee, the Joint Spiny Dogfish Committee and the Councils. Adjustments to the management measures, once implemented, would not be expected to occur during the period of multi-year specifications. Nevertheless, if new information indicated that modification to the multi-year management measures is necessary to ensure that the target F of 0.08 is not exceeded, the Councils would initiate the process for setting specifications in order to make such modifications. Given the elimination of the annual review/management measure adjustment process under this proposed action, environmental impact evaluation in the specification setting year would have to thoroughly consider the uncertainty associated with projected estimates of stock size in the 1 to 5 year time horizon. Accordingly, Council recommendations for multi-year management measures would have to be adequately conservative to accommodate this uncertainty under the proposed action.

During the development of Framework 1, the Councils considered and analyzed the following three alternatives for a multi-year specifications process: A no-action alternative, which would continue the requirement to establish spiny dogfish specifications on an annual basis; the proposed alternative; and an alternative that would require the Councils to conduct an annual review of the previously established multi-year specifications. The Councils selected the proposed action because it provided the most straightforward and efficient administrative process for establishing multi-year specifications, and because it is expected to provide greater predictability to the commercial fishing sector.

Classification

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

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, and the objectives of and legal basis for this action is contained in the preamble of this proposed rule. The preamble also includes complete descriptions of the proposed, no action, and the other alternative discussed here. Under the current management system, the Councils annually submit a specifications document to NMFS for review. Under the other two alternatives, the Councils would submit a specifications document only in the first year of the multi-year specifications period, if applicable. This would reduce substantially the administrative burden on both the Councils and NMFS. Additionally, longer term specifications should provide greater predictability to the commercial fishing sector. Under the proposed alternative, an annual review of updated information on the fisheries by the MAFMC's Spiny Dogfish Monitoring Committee, the Joint Spiny Dogfish Committee, and the Councils would not be required during the period of multi-year specifications because the analysis of multi-year measures would have evaluated the impacts of the measures for years 2 through 5, as appropriate, in the specifications process. The Councils

concluded that the provision for an annual review would not be necessary and would reduce administrative efficiency. However, the Councils contemplate that a review would be initiated when new information indicated that modifications could be required to ensure that the target F of 0.08 is not exceeded.

There are no relevant Federal rules that duplicate, overlap, or conflict with this rule. This rule does not contain any new, nor does it revise any existing reporting, recordkeeping, and other compliance requirements. Framework 1 deals only with the administrative periodicity of specifications process, and therefore would have minimal direct effect on entities participating in these fisheries.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.230 is revised to read as follows:

§ 648.230 Catch quotas and other restrictions.

(a) *Process for setting specifications.* The Spiny Dogfish Monitoring Committee will review the following data at least every five years, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure that a target fishing mortality rate (F) of 0.08 will not be exceeded: Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a commercial quota and any other measures including those in paragraphs (b)(1)-(b)(5) of this section that are necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1 - April 30), for a period of 1–5 fishing years. The quota may be set within the range of zero to the maximum allowed. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;
(2) Seasons;
(3) Mesh size restrictions;
(4) Trip limits; or
(5) Other gear restrictions.

(c) *Joint Spiny Dogfish Committee recommendation.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a commercial quota and, possibly, other measures, including those specified in paragraph (b) of this section, necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1 – April 30), for a period of 1–5 fishing years. The commercial quota may be set within the range of zero to the maximum allowed.

(d) *Council recommendations.* The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1 - April 30), for a period of 1–5 fishing years. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota and other management measures to assure that the target F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1 - April 30), for a period of 1–5 fishing years. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils. After such review, NMFS shall publish a proposed rule in the **Federal Register** specifying a coastwide commercial quota and other meas ures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded in any fishing year (May 1 - April 30), for a period of 1–5 fishing years. After considering public comments, NMFS shall publish a final rule in the **Federal Register** to implement such a quota and other measures.

(e) *Annual quota.* [Reserved]

(f) Distribution of annual quota. (1) The annual quota specified according to the process outlined in paragraph (a) of this section shall be allocated between two semi-annual quota periods as follows: May 1 through October 31 (57.9 percent) and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

[FR Doc. 05–23536 Filed 11–30–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 230
Thursday, December 1, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Settlement Pursuant to CERCLA; Duncan Township Landfill, Houghton County, MI

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement for recovery of past response costs with Duncan Township (the Settling Party) concerning the Duncan Township Landfill in Houghton County, Michigan. The settlement requires the Settling Party to pay $65,000 in installment payments over ten years to the USDA Forest Service, Eastern Region. The settlement includes a covenant not to sue the Settling Party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), with regard to the Site.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Ottawa National Forest, E6248 U.S. Highway 2, Ironwood, Michigan 49938 and at the office of the USDA Forest Service Eastern Region, 626 East Wisconsin Avenue, Room 600, Milwaukee, WI 53202.

DATES: Comments must be submitted on or before January 3, 2006.

ADDRESSES: The proposed settlement is available for public inspection at the Ottawa National Forest, E6248 U.S. Highway 2, Ironwood, Michigan 49938 and at the office of the USDA Forest Service Eastern Region, 626 East Wisconsin Avenue, Room 600, Milwaukee, Wisconsin 53202. A copy of the proposed settlement may be obtained from Robert Lueckel on the Ottawa National Forest at (906) 932–1330, or from Kirk M. Minckler with USDA's Office of the General Counsel, (303) 275–5549. Comments should reference the Duncan Township Landfill, Houghton County, Michigan, and should be addressed to Kirk M. Minckler, USDA Office of the General Counsel, P.O. Box 25005, Denver, Colorado 80225–0005.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Robert Lueckel, Ottawa National Forest, E6248 U.S. Highway 2, Ironwood, Michigan 49938; phone (906) 932–1330. For legal information, contact Kirk M. Minckler, USDA Office of the General Counsel, P.O. Box 25005, Denver, Colorado 80225–0005; phone (303) 275–5549.

Dated: November 18, 2005.

Forrest Starkey,

Deputy Regional Forester, USDA Forest Service, Eastern Region.

[FR Doc. 05–23530 Filed 11–30–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[05–02–S]

Designation for Alabama, Essex (IL), Springfield (IL), and Washington Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Alabama Department of Agriculture and Industries (Alabama); Kankakee Grain Inspection, Inc. (Kankakee); Springfield Grain Inspection, Inc. (Springfield); and Washington Department of Agriculture (Washington).

EFFECTIVE DATE: January 1, 2006.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 1, 2005 **Federal Register** (70 FR 9911), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by July 1, 2005.

Alabama, Kankakee, Springfield, and Washington were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined that Alabama, Kankakee, Springfield, and Washington are able to provide official services in the geographic areas specified in the June 1, 2005, **Federal Register**, for which they applied. These designation actions to provide official services are effective January 1, 2006, and terminate December 31, 2008, for Alabama, Kankakee, Springfield, and Washington. Interested persons may obtain official services by calling the telephone numbers listed below.

Official Agency
Headquarters Location and Telephone
Designation Term

Alabama

Montgomery, AL; 334–240–7231
Additional locations: Mobile, AL, Decatur, AL
01/01/06–12/31/08

Kankakee

Essex, IL; 815–365–2268
Additional location: Tiskilwa, IL
01/01/06–12/31/08

Springfield

Springfield, IL; 217–522–5233
01/01/06–12/31/08

Washington

Olympia, WA; 360–902–1921,
Additional locations: Aberdeen, WA, Colfax, WA, Kalama, WA, Pasco, WA, Seattle, WA, Spokane, WA, Tacoma, WA, Vancouver, WA
01/01/06–12/31/08

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E5–6701 Filed 11–30–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers And Stockyards Administration

[05–B–W]

Designation of Columbus (OH) to Provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, (USDA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Columbus Grain Inspection, Inc. (Columbus), to provide Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 2005.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 2004, **Federal Register** (69 FR9883), GIPSA announced the designation of Columbus to provide official inspection services under the Act, effective January 1, 2005, and ending December 31, 2007. Subsequently, Columbus asked GIPSA to amend their designation to include official weighing services. Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and determined that Columbus is qualified to provide official weighing services in their currently assigned geographic area.

Effective October 1, 2005, and terminating December 31,2007 (the end of Columbus's designation to provide official inspection services), Columbus's present designation is amended to include Class X or Class Y weighing within their assigned geographic area, as specified in the June 1, 2004, **Federal Register** (69FR 30869). Official services may be obtained by contacting Columbus at 740–474–3519.

Authority: Pub.L. 94–582, 90Stat. 2867, as amended (7 U.S.C. 71 et seq.).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E5–6700 Filed 11–30–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[05–04–A]

Opportunity for Designation in the Topeka (KS), Minot (ND), Lake Village (IN), and Cincinnati (OH) Areas, Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in June 2006. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: Kansas Grain Inspection Service, Inc. (Kansas); Minot Grain Inspection, Inc. (Minot); Schneider Inspection Service, Inc. (Schneider); and Tri-State Grain Inspection Service, Inc. (Tri-State).

DATES: Applications and comments must be received by January 1, 2006.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov.*
- Mail: Send hardcopy to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

For Kansas, main office in Topeka, Kansas; Minot, main office in Minot, North Dakota; and Tri-State, main office in Cincinnati, Ohio; the current designations started July 1, 2003, and will end June 30, 2006. For Schneider, main office in Lake Village, Indiana; the current one year designation started July 1, 2005, and will end June 30, 2006.

Official agency	Main office	Designation start	Designation end
Kansas	Topeka, KS	07/01/2003	06/30/2006
Minot	Minot, ND	07/01/2003	06/30/2006
Schneider	Lake Village, IN	07/01/2005	06/30/2006
Tri-State	Cincinnati, OH	07/01/2003	06/30/2006

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Colorado, Kansas, Nebraska, and Wyoming, is assigned to Kansas.

The entire State of Colorado.

The entire State of Kansas.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

Goshen, Laramie, and Platt Counties, Wyoming.

Kansas' assigned geographic area does not include the following grain elevators inside Kansas' area which have been and will continue to be serviced by the following official Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Minot.

Bounded on the North by the North Dakota State line east to the eastern Bottineau County line;

Bounded on the East by the eastern Bottineau County line south to the northern Pierce County line; the northern Pierce County line east to State Route 3; State Route 3 south to State Route 200;

Bounded on the South by State Route 200 west to State Route 41; State Route 41 south to U.S. Route 83; U.S. Route 83 northwest to State Route 200; State Route 200 west to U.S. Route 85; U.S. Route 85 south to Interstate 94; Interstate 94 west to the North Dakota State line; and

Bounded on the West by the North Dakota State line.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Benson Quinn Company, Underwood, and Falkirk Farmers Elevator, Washburn, both in McLean County: and Harvey Farmers Elevator, Harvey, Wells County (located inside Grain Inspection, Inc.'s, area).

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois, Indiana, and Michigan, is assigned to Schneider.

In Illinois and Indiana:

Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by the Indiana-Illinois State line north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

Berrien, Cass, and St. Joseph Counties, Michigan.

Schneider's assigned geographic area does not include the export port locations inside Schneider's area which are serviced by GIPSA.

d. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Ohio, is assigned to Tri-State.

Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of State Route 244), and Switzerland Counties, Indiana.

Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of State Route 59), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties, Kentucky.

In Ohio:

Bounded on the North by the northern Preble County line east; the western and northern Miami County lines east to State Route 296; State Route 296 east to State Route 560; State Route 560 south to the Clark County line; the northern Clark County line east to U.S. Route 68;

Bounded on the East by U.S. Route 68 south to U.S. Route 22; U.S. Route 22 east to State Route 73; State Route 73 southeast to the Adams County line; the eastern Adams County line;

Bounded on the South by the southern Adams, Brown, Clermont, and Hamilton County lines; and

Bounded on the West by the western Hamilton, Butler, and Preble County lines.

2. Opportunity for Designation

Interested persons, including Kansas, Minot, Schneider, and Tri-State, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning July 1, 2006, and ending June 30, 2009. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *www.usda.gov/gipsa/oversight/parovreg.htm.*

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services for the Kansas, Minot, Schneider, and Tri-State official agencies. Substantive comments citing reasons and pertinent data for support or objection to the designation of the applicants will be considered in the designation process. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E5–6702 Filed 11–30–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Grain Inspection, Packers and Stockyards Administration (GIPSA) intention to request an extension for and revision to a currently approved information collection related to the delivery of services conducted under the official inspection, grading, and weighing programs authorized under the United States Grain Standards Act and the Agricultural Marketing Act of 1946. This voluntary survey would give customers of the official inspection, grading, and weighing programs, who are primarily in the grain, oilseed, rice, lentil, dry pea, edible bean, and related agricultural commodity markets, an opportunity to provide feedback on the quality of services they receive and will provide information on new services that they would like to receive. This feedback would assist GIPSA's Federal Grain Inspection Service (FGIS) to improve services and service delivery provided by the official inspection, grading, and weighing system.

DATES: Written comments must be submitted on or before January 30, 2006.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to *comments.gipsa@usda.gov.*
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register.**

Background Documents: Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Sharpe, Director, Compliance Division, e-mail address: *John.R.Sharpe@usda.gov*, telephone (202) 720–8262.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) (AMA), authorize the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMA, GIPSA's FGIS offers inspection, weighing, grading, quality assurance, and certification services for a user-fee, to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. Under FGIS oversight, the official inspection, grading, and weighing programs are a public-private partnership including Federal, State, and private agencies and provides official inspection, grading, and weighing services to the domestic and export trade.

There are approximately 2,500 current users of the official inspection, grading, and weighing programs. These customers are located nationwide and represent a diverse mixture of small, medium, and large producers, merchandisers, processors, exporters, and other financially interested parties. These customers request official services from an FGIS Field Office; delegated, designated, or cooperating State office; or designated private agency office.

The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. To accomplish this goal and in accordance with Executive Order 12862, FGIS is seeking feedback from customers to evaluate the services provided by the official inspection, grading, and weighing programs.

Title: Survey of Customers of the Official Inspection, Grading, and Weighing Programs (Grain and Related Commodities).

OMB Number: 0580–0018.

Expiration Date of Approval: July 31, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The collection of information using a voluntary customer service survey will provide all paying customers of FGIS and the official inspection, grading, and weighing programs an opportunity to evaluate, on a scale of one to five, the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Customers will also have an opportunity to indicate what new or existing services they would use if such services were offered or available.

FGIS needs to have a more formal means of determining customers' expectations or the quality of service that is delivered. To collect this information, FGIS proposes to distribute, over a 3-year period, a voluntary customer service survey. The initial survey instrument will consist of nine questions. Subsequent survey instruments will be tailored to earlier responses. The information collected from the survey will allow FGIS to ascertain customers' satisfaction with existing services, compare results from year to year, and determine what new services customers desire. The customer service survey consists of one document comprised of nine questions where customers assess the timeliness, cost effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Some examples of survey questions include the following: ''I receive results in a timely manner,'' ''Official results are accurate,'' and ''Inspection personnel are knowledgeable.'' These survey questions will be assessed using a one to five rating scale with responses ranging from ''strongly disagrees'' to ''strongly agrees'' or ''no opinion.'' Customers are also asked for which product they primarily request service, and what percentage of their product is officially inspected. There is also space available on the survey for the customer to provide a response to the following statement: ''I would use the following new/existing services if they were offered/available.''

By obtaining information from customers through a voluntary customer service survey, FGIS could continue to improve services and service delivery provided by the official inspection, grading, and weighing programs to meet or exceed customer expectations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes (*i.e.*, 0.167 hours) per response.

Respondents: The primary respondents will be the direct paying customers of FGIS and the official inspection, grading, and weighing programs.

FY 2006: Estimated Number of Respondents: 1,875 (*i.e.*, 2,500 total customers times 75% response rate = 1,875).

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours. (1,875 responses times 0.167 hours/response = 313 hours).

FY 2007: Estimated Number of Respondents: 1,875.

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours.

FY 2008: Estimated Number of Respondents: 1,875.

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours.

Copies of this information collection can be obtained from Tess Butler, Grain Inspection, Packers and Stockyards Administration, FGIS, at (202) 720–7486.

Comments: Comments are invited on: (a) Whether the collection of the information is necessary for the proper performance of the functions of FGIS, including whether the information will have a practical utility; (b) the accuracy of FGIS' estimate of the burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

Comments should be addressed to Tess Butler, as referenced above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E5–6703 Filed 11–30–05; 8:45 am]

BILLING CODE 3410–EN–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, December 7, 2005, 3 p.m.–5 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 Carol Booker at (202) 203–4545.

Dated: November 28, 2005.

Carol Booker,

Legal Counsel.

[FR Doc. 05–23573 Filed 11–29–05; 2:43 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on December 8, 2005, 10:30 a.m., Herbert C. Hoover Building, Room B841A, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening remarks and introductions.

2. Presentation by Boeing.

Closed Session

3. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 18, 2005, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: November 28, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–23535 Filed 11–30–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to defer the initiation of an

administrative review for one antidumping duty order and one countervailing duty order.

EFFECTIVE DATE: December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of 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) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received requests to defer for one year the initiation of the October 1, 2004 through September 30, 2005 administrative review of the antidumping duty order on Certain Hard Red Spring Wheat from Canada and the January 1, 2004 through December 31, 2004 administrative review of the countervailing duty order on Certain Hard Red Spring Wheat from Canada with respect to one exporter in accordance with 19 CFR 351.213(c). The Department received no objections to these requests from any party cited in 19 CFR 351.213(c)(l)(ii).

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2006. Also, in accordance with 19 CFR 351.213(c), we are deferring for one year the initiation of the October 1, 2004 through September 30, 2005 administrative review of the antidumping duty order on Certain Hard Red Spring Wheat from Canada and the January 1, 2004 through December 31, 2004 administrative review of the countervailing duty order on Certain Hard Red Spring Wheat from Canada with respect to one exporter.

	Period to be reviewed
Antidumping Duty Proceedings	
CANADA: Carbon and Certain Alloy Steel Wire Rod.	
A–122–840	10/1/04–9/30/05
Ivaco Rolling Mills L.P. (aka Ivaco Rolling Mills 2004 L.P.).	
Sivaco Ontario Processing (aka Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P.).	
MEXICO: Carbon and Certain Alloy Steel Wire Rod.	
A–201–830	10/1/04–9/30/05
Hylsa Puebla, S.A. de C.V.	
THE PEOPLE'S REPUBLIC OF CHINA: Polyvinyl Alcohol[1].	
A–570–879	10/1/04–9/30/05
Sinopec Sichuan Vinylon Works.	
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Retail Carrier Bags.	
A–570–886	1/26/04–7/31/05
Ampac Packaging (Nanjing) Co.[2]	
TRINIDAD AND TOBAGO: Carbon and Certain Alloy Steel Wire Rod.	
A–274–804	10/1/04–9/30/05
Mittal Steel Point Lisas Limited.	
UKRAINE: Carbon and Certain Alloy Steel Wire Rod.	
A–823–812	10/1/04–9/30/05
JSC KRYVORIZHSTAL.	
Countervailing Duty Proceedings	
IRAN: Certain In–Shell Roasted Pistachios.	
C–507–601	1/1/04–12/31/04
Tehran Nima Trading Company, Inc./dba Nima Trading Company.	
Suspension Agreements	
None.	
Deferral of Initiation of Administrative Reviews	
CANADA: Certain Hard Red Spring Wheat.	
A–122–847	10/1/04–09/30/05
Canadian Wheat Board.	
CANADA: Certain Hard Red Spring Wheat.	
C–122–848	1/1/04–12/31/04
Canadian Wheat Board.	

[1] If the above-named company does not qualify for a separate rate, all other exporters of polyvinyl alcohol from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[2] In the initiation notice that published on September 28, 2005 (70 FR 56631), the review period for Ampac was incorrect. The period listed above is the correct period of review for that firm. We also note that if the above-named company does not qualify for a separate rate, all other exporters of polyethylene retail carrier bags from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States, 291 F.3d 806* (Fed Cir.

2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 18, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4for Import Administration.

[FR Doc. E5–6710 Filed 11–30–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of 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) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of December 2005,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings	
ARGENTINA: Honey A–357–812	12/1/04–11/30/05
BRAZIL: Certain Carbon Steel Butt–Weld Pipe Fittings A–351–602	12/1/04–11/30/05
BRAZIL: Silicomanganese A–351–824	12/1/04–11/30/05
CHILE: Certain Preserved Mushrooms A–337–804	12/1/04–11/30/05
INDIA: Carbazole Violet Pigment 23 A–533–838	6/24/04–11/30/05
INDIA: Certain Hot–Rolled Carbon Steel Flat Products A–533–820	12/1/04–11/30/05
INDIA:Stainless Steel Wire Rod A–533–808	12/1/04–11/30/05
INDONESIA: Certain Hot–Rolled Carbon Steel Flat Products A–560–812	12/1/04–11/30/05
JAPAN: High and Ultra–High Voltage Ceramic Station Post Insulators A–588–862	12/1/04–11/30/05
JAPAN: Polychloroprene Rubber A–588–046	12/1/04–11/30/05
JAPAN: P.C. Steel Wire Strand A–588–068	12/1/04–11/30/05
JAPAN: Welded Large Diameter Line Pipe A–588–857	12/1/04–11/30/05
REPUBLIC OF KOREA: Welded ASTM A–312 Stainless Steel Pipe A–580–810	12/1/04–11/30/05
TAIWAN: Carbon Steel Butt–Weld Pipe Fittings A–583–605	12/1/04–11/30/05
TAIWAN: Porcelain–On-Steel Cooking Ware A–583–508	12/1/04–11/30/05
TAIWAN: Welded ASTM A–312 Stainless Steel Pipe A–583–815	12/1/04–11/30/05
THE PEOPLE'S REPUBLIC OF CHINA: Carbazole Violet Pigment 23 A–570–892	6/24/04–11/30/05
THE PEOPLE'S REPUBLIC OF CHINA: Cased Pencils A–570–827	12/1/04–11/30/05
THE PEOPLE'S REPUBLIC OF CHINA: Hand Trucks and Parts Thereof A–570–891	5/24/04–11/30/05
THE PEOPLE'S REPUBLIC OF CHINA: Honey A–570–863	12/1/04–11/30/05
THE PEOPLE'S REPUBLIC OF CHINA: Malleable Cast Iron Pipe Fittings A–570–881	12/1/04–11/30/05
THE PEOPLE'S REPUBLIC OF CHINA: Porcelain–on-Steel Cooking Ware A–570–506	12/1/04–11/30/05
THE PEOPLE'S REPUBLIC OF CHINA: Silicomanganese A–570–828	12/1/04–11/30/05
Countervailing Duty Proceedings	
ARGENTINA: Honey C–357–813	1/1/04–12/31/04
INDIA: Carbazole Violet Pigment 23 C–533–839	4/27/04–12/31/04
INDIA: Certain Hot–Rolled Carbon Steel Flat Products C–533–821	1/1/04–12/31/04
INDONESIA: Certain Hot–Rolled Carbon Steel Flat Products C–560–81	1/1/04–12/31/04
SOUTH AFRICA: Certain Hot–Rolled Carbon Steel Flat Products C–791–810	1/1/04–12/31/04
THAILAND: Certain Hot–Rolled Cabon Steel Flat Products C–549–818	1/1/04–12/31/04
Suspension Agreements	
MEXICO: Fresh Tomatoes A–201–820	12/1/04–11/30/05

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 2005. If the Department does not receive, by the last day of December 2005, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 23, 2005.

Holly A. Kuga,

Senior Office Director,AD/CVD Operations, Office 4for Import Administration.

[FR Doc. E5–6735 Filed 11–30–05; 8:45 am]

BILLING CODE 3510–DS–S

Antidumping duty proceedings	Department contact
Helical Spring Lock Washers from the People's Republic of China	Maureen Flannery, (202) 482–3020.
Helical Spring Lock Washers from Taiwan (A–583–820)	Zev Primor, (202) 482–4114.
Silicomanganese from Brazil (A–351–824)	Zev Primor, (202) 482–4114.
Silicomanganese from the People's Republic of China (A–570–828)	Maureen Flannery, (202) 482–3020.
Silicomanganese from the Ukraine (A–823–805)	Maureen Flannery, (202) 482–3020.
Silicon Metal from Brazil (A–351–806)	Zev Primor, (202) 482–4114.
Silicon Metal from the People's Republic of China (A–570–806)	Maureen Flannery, (202) 482–3020.
Stainless Steel Butt-Weld Pipe Fittings from Italy (A–475–828)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Butt-Weld Pipe Fittings from Malaysia (A–557–809)	Zev Primor, (202) 482–4114.
Stainless Steel Butt-Weld Pipe Fittings from the Philippines (A–565–801)	Dana Mermelstein, (202) 482–1391.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

ACTION: Notice of Upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for January 2006

The following Sunset Reviews are scheduled for initiation in January 2006 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Countervailing Duty Proceedings

No countervailing duty proceedings are scheduled for initiation in January 2006.

Suspended Investigations

No suspended investigations are scheduled for initiation in January 2006.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 22, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–6734 Filed 11–30–05; 8:45 am]

BILLING CODE 3510–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Research Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F.

Dates: Applications Available: December 1, 2005. January 30, 2006.

Eligible Applicants: Only individuals who have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities are eligible. The program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions, Merit Fellowship recipients had research experience at the doctoral level.

Note: Institutions are not eligible to be recipients of Research Fellowships.

Estimated Available Funds: $500,000. The Administration has requested $500,000 for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Awards: Merit Fellowships: $65,000; Distinguished Fellowships: $75,000.

Estimated Number of Awards: 7 for both Merit and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to enable highly qualified individuals, including those who are individuals with disabilities, to conduct research about the rehabilitation of individuals with disabilities.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/.*

The Fellowship program is in concert with NIDRR's proposed Long-Range Plan (Plan) published in the **Federal Register** on July 27, 2005 (70 FR 43522). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister/other/2005–3/072705d.html.*

Through the implementation of the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR part 356).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Research Fellowships Program

Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Section 204 authorizes research designed to maximize the full inclusion and integration into society, employment, independent living, family, support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75.60–61, 77, 82, 84, 85, and 97(b). The regulations in 34 CFR 350.51–52, (c) The regulations for this program in 34 CFR part 356.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $500,000. The Administration has requested $500,000 for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Awards: Merit Fellowships: $65,000; Distinguished Fellowships: $75,000.

Estimated Number of Awards: 7 for both Merit and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Only individuals who have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities are eligible. The program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions, Merit Fellowship recipients had research experience at the doctoral level.

Note: Institutions are not eligible to be recipients of research Fellowships.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133F.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. The application package will provide instructions for completing all components to be included in either the paper application or electronically using Grants.gov. Each application must include the required forms; an abstract; Human Subjects narrative, if applicable; Part III narrative; resume; and other related materials, if applicable.

Note: Part II, the budget section, is not required for this program and should not be included.

Applicants submitting a paper application must place their Social Security Number in Block #2 on the ED 424 form in place of the D-U-N-S Number. Applicants submitting electronically using Grants.gov must place their Social Security Number in Block #6 on the SF 424 in place of the Employer Identification Number (EIN).

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 24 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the resume, the bibliography, or the letters of support. However, you must include all of the narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 1, 2005.

Deadline for Transmittal of Applications: January 30, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal. The Merit Fellowships and Distinguished Fellowships awards are one Full Time Equivalent (FTE) awards. The Fellow must work principally on the fellowship during the term of the fellowship award. We define one FTE as equal to 40 hours per week. The Fellow cannot receive support through any other Federal Government grants during the term of the fellowship award.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov

Apply site in FY 2006. Research Fellowships—CFDA Number 84.133F is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Research Fellowships Program at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must register as an individual. You do not need to register in the Central Contractor Registry (CCR). The steps to register as an individual are—

(1) Go to the Grants.gov Credential Provider Web page, *https://apply.grants.gov/IndCPRegister.* Then enter the funding opportunity number.

Note: The funding opportunity number can be located when you search for this grant opportunity on *http://www.grants.gov/Find*.

(2) Fill out the credential information to obtain a credential username and password.

(3) Take the credential username and password and go to the Register with Grants.gov link to complete the registration at: *https://apply.grants.gov/IndGGRegister.*

(4) Registration for individuals is complete, once the Grants.gov registration step is finished.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133F), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition is from 34 CFR 356.30 through 356.32 and are listed in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period you must submit a final performance report as directed by 34 CFR 356.51.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the Research Fellowship program include—

- The number of former pre- and post-doctoral students and fellows who received research training supported by NIDRR who are actively engaged in conducting high-quality research and demonstration projects;
- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and
- The number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through review of grantee performance and products. NIDRR uses information submitted by grantees as part of their final performance report for these reviews. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

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

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

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

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

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

Dated: November 28, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–6724 Filed 11–30–05; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8004–1]

Supplemental Funding for Brownfields Revolving Loan Fund Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the availability.

SUMMARY: EPA's Office of Brownfields Cleanup and Redevelopment is accepting requests for Brownfields Revolving Loan Fund Grant (RLF) supplemental funding and will make recommendations to senior management regarding these requests using the following criteria:

- The RLF grantee must have made at least one loan or subgrant AND have significantly depleted existing available loan and/or subgrant funds,
- Demonstrated need for supplemental funding, including the numbers of sites and communities that may benefit from supplemental funding,
- Demonstrated ability to administer and ''revolve'' the RLF grant, and administer subgrant(s) and/or loan(s),
- Demonstrated ability to use the RLF grant to address funding gaps for cleanup, and,
- Community benefit from past and potential loan(s) and/or subgrant(s).

RLF supplemental funding will be made available several times a year, subject to funding availability. Interested RLF grantees who have made at least one loan or subgrant should contact their Brownfields Regional Coordinators for specific information regarding application. The selection of RLF grantees for supplemental funding is made at the Assistant Administrator level.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in Appendix I of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants. Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields.* Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777 or the U.S. EPA Call Center at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

FOR FURTHER INFORMATION CONTACT: Alison Evans, with the U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777 OR the appropriate Brownfields Regional Contact: EPA Region 1, Diane Kelley, (617) 918–1424; EPA Region 2, Larry D'Andrea, (212) 637–4314; EPA Region 3, Tom Stolle, (215) 814–3129; EPA Region 4, Rosemary Patton, (404) 562–8866; EPA Region 5, Deborah Orr, (312) 886–7576; EPA Region 6, Amber Perry, (214) 665–3172; EPA Region 7, Susan Klein, (913) 551–7786; EPA Region 8, Kathie Atencio, (303) 312–6803; EPA Region 9, Carolyn Douglas, (415) 972–3092; EPA Region 10, Tim Brincefield, (206) 553–2100.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training.

Funding for the brownfields grants is authorized under Section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). Eligibility for brownfields assessment and revolving loan fund grants is limited to ''eligible entities'' as defined in section 104(k)(1) of CERCLA. These include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. Eligibility for brownfields cleanup grants is limited to ''eligible entities'' and nonprofits.

In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields assessment, revolving loan fund, and cleanup grants. Coalitions of eligible governmental entities are eligible to apply for the brownfields revolving loan fund grants, but only one member of the coalition may receive a cooperative agreement.

Dated: November 21, 2005.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. E5–6720 Filed 11–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8004–4]

Air Quality Management Subcommittee to the Clean Air Act Advisory Committee (CAAAC); Notice of Meeting

Summary: The Environmental Protection Agency (EPA) established the CAAAC on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Air Quality Management subcommittee to the CAAAC will hold its next open meeting on Monday, December 12, 2005, from approximately 2 p.m. to 3:30 p.m. via telephone conferencing. Any member of the public who wishes to submit written comments, or who wants further information concerning this meeting, should follow the procedures outlined in the section below titled ''Providing Written Comments at this Meeting''. Participation in the teleconference will be limited and available on a first-come, first-served basis. Because of the limitations of the teleconferencing system, members of the public wishing to attend this meeting must contact Ms. Debbie Stackhouse, Office of Air and Radiation, U.S. EPA (919) 541–5354, or by mail at U.S. EPA, Office of Air Quality Planning and Standards (Mail Code C 404–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, or by email at: *stackhouse.debbie@epa.gov* by noon Eastern Time on December 7, 2005, to obtain the conference phone number.

Inspection of Committee Documents: The subcommittee agenda and any documents prepared for the meeting will be sent to participants via e-mail prior to the start of the meeting. Thereafter, these documents, together with the meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by telephoning (202) 260–7548; FAX (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: For further information concerning the Air Quality Management subcommittee to the CAAAC , please contact Mr. Jeffrey Whitlow, Office of Air and Radiation, U.S. EPA (919) 541–5523, FAX (919) 685–3307 or by mail at U.S. EPA, Office

of Air Quality Planning and Standards (Mail Code C 439–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, or e-mail at: *whitlow.jeff@epa.gov.* Additional Information about the CAAAC and its subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/air/caaac.*

Providing Written Comments at This Meeting: It is the policy of the subcommittee to accept written public comments of any length, and to accommodate oral public comments whenever possible. Due to the brief nature of this meeting, the subcommittee will only accept written comments. The subcommittee expects that statements submitted for this meeting will not be repetitive of previously-submitted oral or written statements. Although the subcommittee accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received by Mr. Whitlow no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the subcommittee members for their consideration. Comments should be supplied to Mr. Whitlow (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature or one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files).

Dated: November 22, 2005.

Gregory A. Green,

Deputy Director, Office of Air Quality Planning and Standards.

[FR Doc. E5–6723 Filed 11–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—8004–6]

Science Advisory Board Staff Office Cancellation of Public Teleconference of the Science Advisory Board Arsenic Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB) Staff Office is canceling a public teleconference meeting of the SAB's Arsenic Review Panel announced earlier (70 FR 69340, November 15, 2005).

DATES: December 5, 2005. The public conference call from 2 p.m. to 4:30 p.m. Eastern Time has been cancelled. A future notice in the **Federal Register** will announce the new date and time for the Arsenic Review Panel's next meeting.

Dated: November 29, 2005.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–23558 Filed 11–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8004–2]

Calhoun Park Area Superfund Site; Charleston, Charleston County, SC; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for payment of all past cost, as well as future costs related to the Calhoun Park Area Site (''Site'') located in Charleston County, Charleston, South Carolina. EPA will consider public comments on the proposed settlement until January 3, 2006. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement and Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. 404/562–8887. *Batchelor.Paula@EPA.Gov.*

Written or e-mail comments may be submitted to Ms. Batchelor at the above address within thirty days of the date of publication.

Dated: November 10, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement and Information Management Branch, Waste Management Division.

[FR Doc. E5–6722 Filed 11–30–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8004–5]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for comment.

SUMMARY: EPA Regions 1, 2, 3, 5, 6, 9, and 10 today are proposing EPA's NPDES general permit for stormwater discharges from industrial activity, also referred to as the Multi-Sector General Permit (MSGP). Today's proposed permit will replace the existing permit covering industrial sites in EPA Regions 1, 2, 3, 5, 6, 8, 9 and 10 that expired on October 30, 2005. Today's proposed permit is similar to the existing permit and will authorize the discharge of stormwater associated with industrial activities in accordance with the terms and conditions described therein. EPA seeks comment on the proposed permit and on the accompanying fact sheet.

DATES: Comments on the proposed general permit must be postmarked by January 16, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send written comments to: Follow the detailed instructions as provided in Section I.B.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed NPDES general permit, contact the appropriate EPA Regional Office listed in Section I.F, or contact Jenny Molloy, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–1939 or e-mail: *molloy.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2005–0007. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Although all documents in the docket are listed in an index, some information is not publicly available,

i.e, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this ≤Federal Register document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

Electronic versions of the proposed permit and fact sheet are available at EPA's stormwater Web site *http://www.epa.gov/npdes/stormwater.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1.

Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark all of the information that you claim to be CBI. For CBI information on computer discs mailed to EPA, mark the surface of the disc as CBI. Also identify electronically the specific information contained in the disc or that you claim is CBI. In addition to one complete version of the specific information claimed as CBI, you must submit a copy that does not contain the information claimed as CBI for inclusion in the public document. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the fact sheet or permit to which each comment refers. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late''. EPA is not required to consider these late comments.

EPA seeks comment on the proposed permit and on the accompanying fact sheet.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search'', and then key in Docket ID No. OW–2005–0007. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov,* Attention Docket ID No. OW–2005–0007. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section I.B.2. These electronic submissions will be accepted in Microsoft Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2005–0007.

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OW–2005–0007. Such

deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments at any time during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

D. Public Meetings

EPA will hold an informal public meeting at EPA headquarters in Washington, DC, December 20, 2005. The public meeting will include a presentation on the draft permit and a question and answer session. In addition, some EPA Regional offices may schedule public meetings in their areas. Due to an informal public meeting's ability to accommodate group discussion and question and answer sessions, public meetings have been used for many stormwater general permits and appear to be more valuable than formalized public hearings in helping the public understand a draft stormwater permit and identify the issues of concern. Written, but not oral, comments for the official permit record will be accepted at the public meetings. Comments generated from what was learned at a public meeting (or discussion with someone who did attend) can be submitted any time up to the end of the comment period. More information on these meetings will be available on the Internet at *http://www.epa.gov/npdes/stormwater* and on the various EPA Regional Web sites including any additional dates and locations if scheduled.

Due to limited seating, those wishing to attend EPA's public meeting are asked to please send an e-mail message containing their name, telephone number and organization to Lance Wills at *wills.lance@epa.gov*. An e-mail message is not required, however. Anyone wishing to may attend. Directions to the meeting site will be provided upon receipt of your e-mail.

E. Finalizing the Permit

After the close of the public comment period, EPA will issue a final permit decision. This decision will not be made until after all public comments have been considered and appropriate changes made to the permit. Responses to Comments will be included as part of the final permit decision.

Since this permit was not reissued or replaced prior to expiration of the MSGP 2000, MSGP is administratively continued in accordance with the Administrative Procedure Act, and remains in force and effect. Any facility with permit coverage prior to the October 30, 2005 expiration date, automatically remains covered by this permit until the earliest of:

- Reissuance or replacement of the permit, at which time the facility must submit an NOI requesting authorization to discharge under the new permit and comply with the requirements of the new permit to maintain authorization to discharge, or:
- The facility submits a Notice of Termination, or;
- Issuance or denial of an individual permit for the facility discharges, or;
- A formal permit decision by EPA not to reissue this general permit, at which time the facility must seek coverage under an alternative general permit or an individual permit.

F. Who Are the EPA Regional Contacts for This Proposed Permit?

For EPA Region 1, contact Thelma Murphy at tel.: (617) 918–1615 or e-mail at *murphy.thelma@epa.gov*.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637–3856 or e-mail at *venezia.stephen@epa.gov* or for Puerto Rico, Sergio Bosques at tel.: (787) 977–5838 or e-mail at *bosques.sergio@epa.gov*.

For EPA Region 3, contact Paula Estornell at tel.: (215) 814–5632 or e-mail at *estornell.paula@epa.gov*.

For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or e-mail at *bell.brianc@epa.gov*.

For EPA Region 6, contact Brent Larsen at tel.: (214) 665–7523 or e-mail at: *larsen.brent@epa.gov*.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or e-mail at *bromley.eugene@epa.gov*.

For EPA Region 10, contact Misha Vakoc at tel.: (206) 553–6650 or e-mail at *vakoc.misha@epa.gov*.

II. Background

A. Statutory and Regulatory History

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase on this program on November 16, 1990, establishing permit application requirements for ''stormwater discharges associated with industrial activity''. See 55 FR 48063. EPA defined the term ''stormwater discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14).

III. Scope and Applicability of the 2006 Multi-Sector General Permit

The 2000 Multi-Sector General Permit expired at midnight, October 30, 2005.

A. Geographic Coverage

EPA can only provide permit coverage for classes of discharges that are outside the scope of a state's NPDES program authorization. EPA notes that unlike the 2000 MSGP, facilities located in Regions 4 and 8 will not be covered by this permit. The geographic coverage of today's proposed permit is listed in Appendix C of the proposed 2006 MSGP.

B. Categories of Facilities Covered

Today's proposed MSGP regulates stormwater discharges from industrial facilities in 29 categories, shown in Table III–1, in the five states and other areas where EPA remains the permitting authority. See Appendix D of the proposed MSGP 2006 and the MSGP fact sheet for more complete information.

Sector A—Timber Products
Sector B—Paper and Allied Products Manufacturing
Sector C—Chemical and Allied Products Manufacturing
Sector D—Asphalt Paving and Roofing Materials Manufactures and Lubricant Manufacturers
Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing
Sector F—Primary Metals
Sector G—Metal Mining (Ore Mining and Dressing)
Sector H—Coal Mines and Coal Mining-Related Facilities
Sector I—Oil and Gas Extraction and Refining

Sector J—Mineral Mining and Dressing
Sector K—Hazardous Waste Treatment Storage or Disposal
Sector L—Landfills and Land Application Sites
Sector M—Automobile Salvage Yards
Sector N—Scrap Recycling Facilities
Sector O—Steam Electric Generating Facilities
Sector P—Land Transportation
Sector Q—Water Transportation
Sector R—Ship and Boat Building or Repairing Yards
Sector S—Air Transportation Facilities
Sector T—Treatment Works
Sector U—Food and Kindred Products
Sector V—Textile Mills, Apparel, and other Fabric Products Manufacturing
Sector W—Furniture and Fixtures
Sector X—Printing and Publishing
Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries
Sector Z—Leather Tanning and Finishing
Sector AA—Fabricated Metal Products
Sector AB—Transportation Equipment, Industrial or Commercial Machinery
Sector AC—Electronic, Electrical, Photographic and Optical Goods
Sector AD—Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director

B. Summary of Significant Changes From 2000 Multi-Sector General Permit

This permit replaces the previous Multi-Sector General Permit that was issued for a five-year term on October 30, 2000 (65 FR 64746). The MSGP 2000 was subsequently corrected on January 9, 2001 (66 FR 1675–1678) and March 23, 2001 (66 FR 16233–16237). On April 16, 2001 (66 FR 19483–19485) EPA re-issued the permit, as corrected, for facilities in certain areas of Regions 8 and 10.

The proposed permit is structured in five sections: general requirements that apply to all facilities (e.g., eligibility of discharges, storm water pollution prevention plan (SWPPP) requirements, and monitoring requirements), industry sector-specific conditions, and specific requirements applicable to individual States or Tribes. Additionally, the appendices provide information on Endangered Species Act and National Historic Properties Act procedures, the Notice of Intent (NOI), the Notice of Termination (NOT), and the Conditional No Exposure Exclusion.

The organization and numbering of today's draft MSGP has been revised from the 2000 MSGP to more clearly present permittee responsibilities. EPA made changes to the discharge authorization time frame, training, monitoring, reporting, recordkeeping, inspections, and some sector-specific provisions to ensure that receiving waters will be adequately protected. The significant changes are summarized below. These changes are discussed in more detail in the MSGP fact sheet.

Discharge Authorization Time Frame

EPA has instituted a 30-day public comment period for facilities that have correctly completed NOI applications. The period begins after EPA posts the facility's NOI on the eNOI Web site. Authorization to discharge is granted at the end of the 30 day period unless EPA has substantive reason to delay or deny authorization.

Monitoring and Reporting

Several changes to MSGP-reporting and monitoring requirements are listed below.

- Inactive and unstaffed sites may exercise a Benchmark Monitoring waiver as long as there are no industrial materials or activities exposed.
- A facility covered under MSGP 2006 must monitor quarterly during year 1 for benchmarks. Facilities with an average of 4 monitoring events that do not exceed the benchmark qualify for a waiver from additional benchmark monitoring for the remainder of the permit term.
- Follow-up monitoring requirements have been added when results indicate a facility's discharge exceeds a numeric effluent limitation, or causes and contributes to an exceedance of a water quality standard, to verify that BMPs have been modified to protect water quality. Facilities with follow-up monitoring exceedances are required to report those to EPA within 30 days of receiving the analytical data.
- Benchmark Monitoring Requirements for Total Suspended Solids (TSS) were added for each sector where they were not otherwise included in the MSGP 2000.
- Total Recoverable Chromium and Phenols were added as Benchmark Monitoring Parameters for the Wood Preserving (SIC 2491) Subsector of Sector A—Timber Products.
- Total Recoverable Manganese was removed as a Benchmark Monitoring Parameter for Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities under Sector G—Metal Mining (Ore Mining and Dressing).
- Total Recoverable Lead, Total Recoverable Nickel, Total Recoverable Zinc, Ammonia Nitrogen, and Nitrate + Nitrite Nitrogen were added as Benchmark Monitoring Parameters for the Oil Refining (SIC 2911) Subsector of Sector I—Oil and Gas Extraction and Refining.
- Total Recoverable Lead was added as a Benchmark Monitoring Parameter for the Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC 3011–3069, rubber manufacturing only) Subsector of Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.
- Total Recoverable Lead and Total Recoverable Copper were added as a Benchmark Monitoring Parameter for the Electronic and Electrical Equipment and Components Except Computers (SIC 3612–3699) Subsector of Sector AC—Electronic, Electrical, Photographic, and Optical Goods Sector.
- Electronic monitoring data reporting options will be available for filing all monitoring data, including follow-up monitoring data. In addition, it will be possible to file reports of unauthorized discharges electronically. All electronic reporting will be through the eNOI Center system.

Industry Sector-specific Requirements

- The organization of Sector G—Metal Mining requirements has been revised. Additional information has been added regarding contaminated seeps and springs discharging from waste rock dumps; final stabilization; management, inspection, maintenance, and cessation of clearing, grading, and excavation activities; site map requirements; and monitoring frequency.
- Management, inspection, maintenance, and cessation requirements for clearing, grading, and excavation activities have been added to Sector J—Mineral Mining and Dressing.
- Additional information has been added to Sector M—Automobile Savage Yards to include the inspection of areas where hazardous materials are stored and the proper handling of mercury-containing automotive switches.
- Added information on mercury spill kits to Sector N—Scrap Recycling and Waste Recycling Facilities.
- Added text to include illicit plumbing connections and a SWPPP requirement to include specific good housekeeping control measures used in each of the facility areas in Sector P—Land Transportation and Warehousing.
- Requirements have been added to Sector S—Air Transportation for emphasizing BMPs, facility inspections, specific good housekeeping control measures requirements, vehicle and equipment washwater requirements, and monitoring during the deicing

season and for describing controls used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow.

- Added electrical and electronic equipment and components to Sector AC—Electronic and Electrical Equipment and Components, Photographic and Optical Goods.

C. Permit Appeal Procedures

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any conditions of the individual permit (40 CFR 124.19 as modified on May 15, 2000, 65 FR 30886).

III. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule-making requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders''. Its definition of ''rule'' encompasses ''an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' APA section 551(4). Its definition of ''order'' is residual: ''a final disposition * * * of an agency in a matter other than rule making but including licensing.'' APA section 551(6) (emphasis added). The APA defines ''license'' to ''include * * * an agency permit * * *'' APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. The APA defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' APA section 551(5). By its terms, then, section 553 applies only to ''rules'' and not also to ''orders,'' which include permits.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, *e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

VI. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed Multi-Sector General Permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. The information collection requirements of the Multi-Sector General Permit have already been approved by the Office of Management and Budget (OMB) (OMB Control No. 2040–0188) in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: November 16, 2005.

Linda M. Murphy,

Director, Office of Ecosystem Protection, EPA Region 1.

Dated: November 16, 2005.

Carl-Axel P. Soderberg,

Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: November 15, 2005.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: November 21, 2005.

Jo Lynn Traub,

Director, Water Division, EPA Region 5.

Dated: November 15, 2005.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

Dated: November 4, 2005.

Alexis Strauss,

Director, Water Division, EPA Region 9.

Dated: November 17, 2005.

Robert R. Robichaud,

Associate Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. E5–6721 Filed 11–30–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3 p.m. on Monday, December 5, 2005, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), Title 5, United States Code, to consider matters relating to the Corporation's corporate activities.

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.

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 28, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–23559 Filed 11–29–05; 12:03 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

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 2:30 p.m. on Monday, December 5, 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.

Discussion Agenda:

Memorandum and resolution re: Proposed 2006 Corporate Operating Budget.

Memorandum and resolution re: Advanced Notice of Proposed Rulemaking on Large-Bank Deposit Insurance Determination Modernization Proposal.

Memorandum and resolution re: Notice and Request for Public Comment Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

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 28, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–23560 Filed 11–29–05; 12:03 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, December 6, 2005, 10 a.m. meeting closed to the public. This meeting was rescheduled to Wednesday, December 7, 2005, at 2 p.m.

DATE AND TIME: Wednesday, December 7, 2005 at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 8, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Advisory Opinion 2005–19: Inside Track Productions by Mr. Emil Franzi.

Notice of Proposed Rulemaking on Coordinated Communications.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–23577 Filed 11–29–05; 2:53 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Atlantic Bancshares, Inc., Bluffton, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Atlantic

Community Bank, Bluffton, South Carolina (in organization).

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp LTD, and Capital Development Bancorp Limited, III, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Community Bank of Rowan, Salisbury, North Carolina (in organization).

Board of Governors of the Federal Reserve System, November 28, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6740 Filed 11–30–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Reliance Bancshares, Inc., Des Peres, Missouri; to engage *de novo* through its subsidiary Reliance Bank, FSB, Fort Myers, Florida, in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 28, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6741 Filed 11–30–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Peace Arch Port of Entry, Blaine, Washington, Draft Environmental Impact Statement

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Notice of availability.

SUMMARY: The US General Services Administration (GSA) hereby gives notice that it has prepared and is distributing a Draft Environmental Impact Statement (DEIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations, for the construction of a new Peace Arch Port of Entry facility in the City of Blaine, Whatcom County, Washington. This project is at the planning and design stage, and site acquisition funding has been approved by Congress.

The US Dept of Homeland Security is currently located in the existing Peace Arch Port of Entry facility. The existing facility does not currently meet the tenant agencies space or mission requirements. The existing facility cannot be adapted to accommodate the required future space needs of the agency tenants. GSA, assisted by Herrera Environmental Consultants, will prepare the Environmental Impact Statement (EIS). GSA is the lead agency in conducting the NEPA study with US Department of Transportation - Federal Highways Administration and Washington State Department of Transportation serving as cooperating agencies. GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EIS.

DATES: Interested parties should submit comments in writing on or before January 17, 2006 to be considered in the formulation of the final rule.

ADDRESSES: Submit comments to U.S. General Services Administration, Regional Environmental Program Analyst (10PTTB), 400 – 15th Street SW, Auburn, WA 98001, ATTN: Michael Levine.

FOR FURTHER INFORMATION CONTACT: Art Campbell at Herrera Environmental Consultants at (206) 441-9080, 2200 Sixth Ave, Suite 1100, Seattle, WA 98121, or Michael Levine, Regional Environmental Program Analyst, GSA, at (253)931-7263.

Mailing List: If you wish to be placed on the project mailing list to receive further information as the EIS process develops, contact Art Campbell at the address and telephone number noted above.

Purpose:

On November 30, 2004, a third public NEPA scoping meeting was held to gather comments from the public. On December 8, 2005 at 6:00pm, an informal open house will be held to inform the public about the status of the project and to answer any questions. On December 13, 2005 at 6:00pm, an official NEPA DEIS public comment meeting will be held to ensure that the public has an opportunity to give comments about the DEIS that will become part of the official record. A court stenographer will transcribe all comments. Both meetings will be held at the Blaine Community Senior Center, 763 G Street in Blaine, WA. With the printing of this Notice of Availability in the **Federal Register**, the 45 day NEPA DEIS comment period begins. The notice of the dates of the informal open house meeting and formal comment meeting will be accomplished through direct mailing correspondence to interested persons, agencies, tribes and organizations, and notices in local newspapers.

The DEIS will evaluate the proposed project, including all reasonable alternatives identified through the scoping process and a no-action alternative. GSA will respond to all relevant comments to the draft EIS received during the 45-day public comment period and they will become part of the Final Environmental Impact Statement (FEIS). With the release to the public of the FEIS, GSA will identify its preferred alternative.

An additional public informal comment meeting will be held after the release of the Final Environmental Impact Statement. After a minimum 30-day period following publication of the Final Environmental Impact Statement, GSA will issue a Record of Decision (ROD) that will identify all alternatives considered by GSA in reaching its decision, specifying the alternative which is environmental preferable. GSA may discuss preferences among alternatives based on relevant factors

including economic and technical considerations and agency statutory missions. GSA shall identify and discuss all such factors including any essential considerations of national policy which is balanced by GSA in making its decision and state how those considerations entered into its decision.

Supplemental Information:

GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EIS. The EIS will examine the short and long-term impacts on the natural and physical environment. The assessment will include but not be limited to impacts such as social environment, changes in land use, aesthetics, changes in adjacent park land, changes in traffic patterns and access to the ''D'' street intersection, economic impacts, and consideration of City planning and zoning requirements. The EIS will examine measures to mitigate significant adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the National Historic Preservation Act to identify potential impacts to existing historic or cultural resources. GSA will consult with Native American tribes through-out the NEPA process.

The EIS will consider a no-action alternative and action alternatives. The no-action alternative would continue the occupancy in the existing Peace Arch Port of Entry facility in Blaine. The action alternatives will consist of three different configurations for construction of a new port of Entry facility.

Dated: 11/18/2005.

William L. DuBray,

Executive Director, Region 10.

[FR Doc. 05–23522 Filed 11–30–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0335]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 3, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Recall Authority—21 CFR Part 810 (OMB Control Number 0910–0432)—Extension

This collection implements medical device recall authority provisions under section 518(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h) and part 810 (21 CFR part 810). Section 518(e) of the act gives FDA the authority to issue an order requiring the appropriate person, including manufacturers, importers, distributors, and retailers of a device, to immediately cease distribution of such device, to immediately notify health professionals and device-user facilities of the order, and to instruct such professionals and facilities to cease use of such device, if FDA finds that there is reasonable probability that the device intended for human use would cause serious adverse health consequences or death.

Section 518(e) of the act sets out a three-step procedure for issuance of a mandatory device recall order. First, if there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease distribution and notification order requiring the appropriate person to immediately do the following: (1) Cease distribution of the device, (2) notify health professionals and device user facilities of the order, and (3) instruct those professionals and facilities to cease use of the device. Second, FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device. Third, after providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the agency determines that such an order is necessary.

The information collected under the recall authority will be used by FDA to ensure that all devices entering the market are safe and effective, to accurately and immediately detect serious problems with medical devices, and to remove dangerous and defective devices from the market.

The respondents to this proposed collection of information are manufacturers, importers, distributors, and retailers of medical devices.

In the **Federal Register** of September 2, 2005 (70 FR 52397), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
810.10(d)	2	1	2	8	16
810.11(a)	1	1	1	8	8
810.12(a) through (b)	1	1	1	8	8

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
810.14	2	1	2	16	32
810.15(a) through (d)	2	1	2	16	32
810.15(e)	10	1	10	1	10
810.16	2	12	24	40	960
810.17	2	1	2	8	16
Total					1,082

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The following burden estimates are based on FDA's experience with voluntary recalls under 21 CFR part 7. FDA expects no more than two mandatory recalls per year, as most recalls are done voluntarily.

Section 810.10(d)—FDA estimates that it will take approximately 8 hours for the person named in a cease distribution and notification order to gather and submit the information required by this section.

The total estimated annual burden is 16 hours.

Section 810.11(a)—Based on experience in similar situations, FDA expects that there will be only one request for a regulatory hearing per year and that it will take approximately 8 hours to prepare this request.

Section 810.12(a) and (b)—Based on experience in similar situations, FDA expects that there will be only one written request for a review of a cease distribution and notification order per year and that it will take approximately 8 hours to prepare this request.

Section 810.14—Based upon its experience with voluntary recalls, FDA estimates that it will take approximately 16 hours to develop a strategy for complying with the order.

Section 810.15(a) through (d)—Based upon its experience with voluntary recalls, FDA estimates that it will take approximately 16 hours to notify each health professional, user facility, or individual of the order.

Section 810.15(e)—Based upon its experience with voluntary recalls, FDA estimates that there will be approximately five consignees per recall (10 per year) who will be required to notify their consignees of the order. FDA estimates that it will take them about 1 hour to do so.

Section 810.16—FDA estimates that it would take no more than 40 hours to assemble and prepare a written status report required by a recall. The status reports are prepared by manufacturers six to twelve times each year. Therefore, each manufacturer would spend no more than 480 hours each year preparing status reports. If there were two FDA invoked recalls each year, the total burden hours estimated would be 960 hours each year.

Section 810.17—Based on experience with similar procedures, FDA estimates that it would take 8 hours to draft a written request for termination of a cease distribution and notification or mandatory recall order.

Dated: November 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23519 Filed 11–30–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0438]

Draft Guidance for Industry on Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency,'' dated November 2005. The draft guidance document provides recommendations for testing the safety, efficacy, and pharmacokinetics of immune globulin intravenous (human) (IGIV) products as replacement therapy in primary humoral immunodeficiency. The draft guidance document is intended to assist sponsors with the design of clinical trials to assess IGIV as replacement therapy in primary humoral immunodeficiency.

DATES: Submit written or electronic comments on the draft guidance by March 1, 2006, to ensure their adequate consideration in the preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for

Industry: Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency,'' dated November 2005. IGIV products are prepared from large pools of plasma collected from large numbers of individual healthy donors, and therefore contain antibodies against many bacterial, viral, and other infectious agents. This draft guidance provides recommendations for the design of clinical trials to assess the safety and efficacy of IGIV products when used as replacement therapy in primary humoral immunodeficiency. The draft guidance is intended to assist in the preparation of the clinical/biostatistical and human pharmacokinetic sections of the biologics license application (BLA).

This draft guidance does not address additional sections of a BLA for an IGIV product for this indication, such as chemistry, manufacturing, and controls (CMC), and preclinical toxicology.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection(s) of information in the guidance was approved under OMB control number 0910–0338.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: November 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23520 Filed 11–30–05; 8:45 am]

BILLING CODE 4160–01–S

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–044]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 7, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1098 (Preliminary) (Liquid Sulfur Dioxide from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before December 8, 2005; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 15, 2005.)
5. Inv. Nos. 731–TA–639 and 640 (Second Review) (Forged Stainless Steel Flanges from India and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 16, 2005.)
6. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 29, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–23574 Filed 11–29–05; 2:43 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–043]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 5, 2005 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1090 (Final) (Superalloy Degassed Chromium from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 15, 2005.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 28, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–23575 Filed 11–29–05; 2:43 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and Section 122 of the Comprehensive Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of justice gives notice that on November 4, 2005, a proposed revised consent decree in *United States* v. *DeMert & Dougherty, Inc.,* No. 2:02CV434 (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana.

The United States' complaint seeks the recovery, pursuant to CERCLA Section 107, 42 U.S.C. 9607, of unreimbursed costs that have been incurred by the United States at the American Chemical Service, Inc. Superfund Site in Griffith, Lake County, Indiana (''ACS Site''), as well as well as

the implementation, pursuant to CERCLA Section 106, 42 U.S.C. 9606, of the United States Environmental Protection Agency's selected remedy for the ACS Site.

On January 11, 1996, DeMert & Dougherty, Inc., filed for bankruptcy under Chapter 11 of the bankruptcy Code in the U.S. District Court for the Northern District of Illinois. (*In re: DeMert & Dougherty, Inc.* (Bankr. N.D. I11. (Eastern Div. No. 96 B 0851))). The case was converted to a Chapter 7 Bankruptcy on June 27, 1996. In that case, the United States filed a proof of claim pertaining to the costs that it incurred at the ACS Site.

A consent decree lodged in 2002 would have resolved DeMert's liability as to the site and the United States' claim in DeMert's bankruptcy through the allowance of an allowed general unsecured claim of $2,225,000.[1]

Public Comments received by the Department of Justice from the group performing the remedy at the ACS Site (''ACS Group'') necessitated the withdrawal of the first consent decree and additional negotiations, which resulted in the proposed revised consent decree. The proposed revised decree would resolve DeMert's liability at the ACS Site under CERCLA and resolve the competing claims of the United States and the ACS Group in DeMert's bankruptcy action, as well as the claims that the ACS Group and DeMert may have against each other. In particular: (1) The ACS Group's claim in DeMert's bankruptcy would be allowed as a general unsecured claim for $2,225,000, while the United States bankruptcy claim would be deemed to have been withdrawn; one-half of the total amount paid to the ACS Group in the bankruptcy would be deposited in an account within the Superfund and be available to reimburse the ACS Group's Operation and Maintenance costs at the Site; the remainder of the amount paid through the bankruptcy would be deposited in a different account within the Superfund for use by EPA in conducting or financing response actions connected with the ACS Site, or for use at other Sites; (2) the Trustee will assist the ACS Group in litigation resulting from actions taken by the ACS Group to obtain coverage under DeMert's insurance policies; (3) DeMert assigns to the ACS Group DeMert's rights to receive payments under DeMert's insurance policies for the Site, and the Trustee will assist the ACS Group in litigation resulting from the ACS Group's attempts to obtain coverage under DeMert's insurance policies. The ACS Group would reimburse the Trustee for the fees and expenses incurred in assisting the ACS Group in such litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Dougherty, Inc.,* D.J. Ref. 90–11–3–1094.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 44320 (contact Assistant United States Attorney Wayne Ault, 219–937–5500), and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois (contact Assistant Regional Counsel Michael McClary (312–886–7163)). During the public comment period, the proposed Amended Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 616–6583, phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $18.00 (25 cents per page reproduction costs) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–23508 Filed 11–30–05 8:45 am]

BILLING CODE 4410–15–M

[1] DeMert filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the U.S. District Court for the Northern District of Illinois in 1996, and the case was later converted to a Chapter 7 Bankruptcy. (In re: DeMert & Dougherty, Inc. (Bankr. N.D. I11. (Eastern Div. No. 96B90851)). Both the United States and the ACS Group filed proofs of claim.

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Sunshine Act Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Closed session—December 12, 2005 from 2 p.m. to 4 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; e-mail: *ehollis@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Public Law 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services, and the three Secretaries administer the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board meeting on December 12, 2005 from 2 p.m. to 4 p.m. will be closed to the public to discuss the personnel, staffing and performance issues. This discussion relates to the internal personnel rules and practices of the Institute and is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). Due to administrative issues associated with scheduling, this announcement will be published in the **Federal Register** less than 15 days prior to the date of the meeting. A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting. Records are kept of all

Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: November 23, 2005.

Sandra L. Baxter,

Director.

[FR Doc. 05–23544 Filed 11–28–05; 3:50 pm]

BILLING CODE 6055–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting; Sunshine Act

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) # 1203.

Dates and Times:

January 25, 2006; 7:45 a.m.–8 p.m. (open 8–11:45, 1–4:30, 5:30–6:30), (closed 4:30–5:30, 6:30–8).

January 26, 2006; 8 a.m.–4 p.m. (open 9–10:30).

Place: University of Massachusetts, Amherst, MA.

Type of Meeting: Part Open.

Contact Person: Dr. Thomas P. Rieker, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center.

Agenda:

January 25, 2006—Closed to brief site visit panel.

January 26, 2006—Open for Directors overview of Materials Research Science and Engineering Center and presentations. Closed to review and evaluate progress of Materials Research Science and Engineering Center.

Reason for Closing: The work being review may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 29, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–23566 Filed 11–29–05; 1:19 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on December 15, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, December 15, 2005—8:30 a.m.–9:45 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Sharon A. Steele (Telephone: 301/415–6805) between 8 a.m. and 5:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: November 23, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–6715 Filed 11–30–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 166th meeting on December 13–15, 2005, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, December 13, 2005

8:30 a.m.–8:45 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

8:45 a.m.–9:45 a.m.: Combined Office of Nuclear Materials Safety and Safeguards (NMSS) and Division Directors Briefing (Open)—The NMSS Office and Division Directors will brief the Committee on recent activities of interest within their respective programs.

9:45 a.m.–11:15 a.m.: U.S. Nuclear Regulatory Commission (NRC's) Plans for the Implementation of a Dose Standard After 10,000 Years (Open)—NRC is proposing to amend its regulations at 10 CFR part 63 that govern the disposal of high-level radioactive wastes in a proposed geologic repository at Yucca Mountain. The proposed rule would implement EPA's proposed standards for doses that could occur after 10,000 years but within the period of geologic stability. The Committee will continue its discussions with representatives from NRC's Office of Nuclear Materials Safety and Safeguards on those proposed revisions. The NRC staff briefing will include the topics of radionuclide inventory, effects of climate change, and dosimetry.

11:30 a.m.–12:30 p.m.: Reasonableness of NRC Infiltration Assumption in the Proposed Part 63 (Open)—NRC's proposed rule change at Part 63 specifies a value to be used to represent climate change after 10,000 years, as called for by EPA. The Committee will hear presentations from and hold discussions with knowledgeable subject matter experts on the reasonableness of NRC's proposed infiltration assumption.

1:30 p.m.–4:15 p.m.: White Paper on Low-Level Radioactive Waste (Open)—The Committee will discuss a proposed white paper on low-level radioactive waste (LLW). NRC staff and stakeholders will provide perspectives on the subject.

4:30 p.m.–5:30 p.m.: Preparation of ACNW Reports/Letters (Open)—The Committee will discuss proposed ACNW reports on matters considered during this and/or previous meetings.

Wednesday, December 14, 2005

8:30 a.m.–8:45 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

8:45 a.m.–10:45 a.m.: Preparation of ACNW Reports/Letters (Open)—The Committee will discuss proposed ACNW reports on matters considered during this and/or previous meetings.

11 a.m.–12 noon.: Generalized Composite Modeling (Open)—The Committee will hear presentations by and hold discussions with representatives of the United States Geological Survey and the NRC Office of Nuclear Regulatory Research regarding demonstrations of the generalized composite approach to the modeling of reactive transport phenomena.

1:30 p.m.–3:30 p.m.: Preparation for Commission Briefing (Open)—The Committee will review the final presentations in preparation for the Commission briefing on January 11, 2006.

3:45 p.m.–5:30 p.m.: Preparation of ACNW Reports/Letters, Continued (Open).

Thursday, December 15, 2005

10 a.m.–10:15 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

10:15 a.m.–11:45 a.m.: Discussion of ACNW Reports/Letters (Open)—The Committee will discuss prepared draft letters and determine whether letters would be written on topics discussed during the meeting.

11:45 a.m.–12:45 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities, and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future committee meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2005 (70 FR 59081). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Ms. Sharon A. Steele, (Telephone 301–415–6805), between 8 a.m. and 4 p.m. e.t., as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Ms. Steele as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Ms. Steele.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

The ACNW meeting dates for Calendar Year 2006 are provided below:

ACNW meeting No.	Date
167	January 10–12, 2006.
	February (No Meeting).
168	March 22–24, 2006.
169	April 18–20, 2006.
170	May 23–25, 2006.
	June (No Meeting).
171	July 17–20, 2006.
	August 2005 (No Meeting).
172	September 19–21, 2006.
	October (No Meeting).
173	November 15–17, 2006.
174	December 12–14, 2006.

Dated: November 23, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–6716 Filed 11–30–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA–05–090]

In the Matter of All Licensees Authorized To Possess Radioactive Material Quantities of Concern, Order Imposing Increased Controls (Effective Immediately)

I

The Licensees identified in Attachment A [1] to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing them to possess certain quantities of radioactive material of concern. Commission regulations at 10 CFR 20.1801 require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

Prior to the terrorist attacks of September 11, 2001 (9/11), several national and international efforts were underway to address the potentially significant health and safety hazards posed by uncontrolled sources. These efforts recognized the need for increased control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. Following 9/11, it was recognized that these efforts should also include a heightened awareness and focus on the need to prevent intentional unauthorized access due to potential malicious acts. These efforts, such as the International Atomic Energy Agency (IAEA) Code of Conduct

[1] Attachment A contains sensitive information and will not be released to the public.

on the Safety and Security of Radioactive Sources (Code of Conduct) concerning Category 1 and 2 sources, seek to increase the control over sources to prevent unintended radiation exposure and to prevent malicious acts.

A Licensee's loss of control of high-risk radioactive sources, whether it be inadvertent or through a deliberate act, has a potential to result in significant adverse health impacts and could reasonably constitute a threat to the public health and safety. In this regard, the Commission has determined that certain additional controls are required to be implemented by Licensees to supplement existing regulatory requirements in 10 CFR 20.1801 and 10 CFR 20.1802, in order to ensure adequate protection of, and minimize danger to, the public health and safety. Therefore, the Commission is imposing the requirements set forth in Attachment B on radioactive materials Licensees who possess, or have near term plans to possess, radionuclides of concern at or above threshold limits, identified in Table 1. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety continues to be adequately protected. These requirements will remain in effect until the Commission modifies its regulations to reflect increased controls.

To effect nationwide implementation, these measures have been determined by the Commission to be an immediate mandatory Category ''B'' matter of compatibility for Agreement States. In parallel with the Commission's issuance of this Order, each Agreement State is required to issue legally binding requirements to put essentially identical measures in place for Licensees under their regulatory jurisdiction.

The Commission recognizes that Licensees may have already initiated many controls set forth in Attachment B to this Order in response to previously issued advisories or on their own. It is also recognized that some controls may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen adverse effect on the safe use and storage of the sealed sources.

Although the additional controls implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that additional controls must be imposed by an Order, consistent with the established regulatory framework.

To provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of control, all Licensees who hold licenses issued by the NRC authorizing possession of radioactive material quantities of concern and as listed in Table 1, ''Radionuclides of Concern,'' (Attachment B, Table 1), shall implement the requirements identified in Attachment B to this Order. In addition, pursuant to 10 CFR 2.202, because of the potentially significant adverse health impacts associated with failure to control high risk radioactive sources, I find that the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR part 33, *it is hereby ordered,* effective immediately, that all Licensees identified in attachment A to this order shall comply with the requirements of this order as follows:

A. The Licensee shall comply with the requirements described in Attachment B to this Order. The Licensee shall complete implementation by May 13, 2006, or the first day that radionuclides of concern at or above threshold limits, identified in Table 1, are possessed, whichever occurs later.

B.1. The Licensee shall in writing, within twenty five (25) days of the date of this Order, notify the Commission, (1) If it is unable to comply with any of the requirements described in Attachment B, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B.2. If the Licensee considers that implementation of any of the requirements described in Attachment B to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, in writing, within twenty five (25) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment B requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. The Licensee shall, within twenty five (25) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment B.

C.2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment B.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission modifies its regulations to reflect increased controls.

Licensee responses to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee's responses shall be marked as ''Withhold From Public Disclosure Under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty five (25) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary,

Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty five (25) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 14th day of November 2005.

For the Nuclear Regulatory Commission.

Jack R. Strosnider, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment A—Redacted

Attachment B—Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern

The purpose of the increased controls (IC) for radioactive sources is to enhance control of radioactive material in quantities greater than or equal to values described in Table 1, to reduce the risk of unauthorized use of radioactive materials, through access controls to aid prevention, and prompt detection, assessment, and response to mitigate potentially high consequences that would be detrimental to public health and safety. These increased controls for radioactive sources are established to delineate licensee responsibility to maintain control of licensed material and secure it from unauthorized removal or access. The following increased controls apply to licensees which, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material defined in Table 1.

IC1. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. For individuals employed by the licensee for 3 years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than 3 years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

c. Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a manufacturing and distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.

d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

IC2. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the Table 1 values.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

b. The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Pre-arranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and

identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify NRC Operations Center at (301) 816–5100.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

IC3.a. In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed those in Table 1 but are less than 100 times Table 1 quantities, per consignment, the licensee shall:

1. Use carriers which:

A. Use package tracking systems,

B. Implement methods to assure trustworthiness and reliability of drivers,

C. Maintain constant control and/or surveillance during transit, and

D. Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

2. Contact the recipient to coordinate the expected arrival time of the shipment;

3. Confirm receipt of the shipment; and

4. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the NRC Operations Center at (301) 816–5100. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center at (301) 816–5100.

b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Table 1 per consignment, the licensee shall:

1. Notify the NRC,[1] in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by NRC.

2. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 3.b.1 shall not apply to future shipments of licensed radioactive material that exceeds 100 times the Table 1 quantities. The licensee shall implement the ASMs for the transportation of RAM QC.

c. If a licensee employs an M&D licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of 3.a. and 3.b above shall not apply.

d. If the licensee is to receive radioactive material greater than or equal to the Table 1 quantities, per consignment, the licensee shall coordinate with the originator to:

1. Establish an expected time of delivery; and

2. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

IC4. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Table 1 values, shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

1. That are only moved outside of the facility (*e.g.*, on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

2. That are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

IC5. The licensee shall retain documentation required by these increased controls for 3 years after they are no longer effective:

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years after the individual's employment ends.

b. Each time the licensee revises the list of approved persons required by 1.d., or the documented program required by 2, the licensee shall retain the previous documentation for 3 years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for 3 years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for 3 years after the shipment or investigation is completed.

e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for 3 years.

IC6. Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

1. General performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure,

2. Protection of sensitive information during use, storage, and transit,

3. Preparation, identification or marking, and transmission,

4. Access controls,

5. Destruction of documents,

6. Use of automatic data processing systems, and

7. Removal from the licensee's sensitive information category.

[1] Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

TABLE 1.—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Se-75	2	54
Sr-90 (Y–90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above [3]	([4])	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (*e.g.*, a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, I of radionuclide, n, A(i,n), to the quantity of concern for radionuclide n, Q(n), listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) (quantity of concern for radionuclide B)] + etc. ..... >1.

Use the following method to determine which sources of radioactive material require increased controls (ICs):

Include any single source equal to or greater than the quantity of concern in Table 1.

Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern.

For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) (quantity of concern of radionuclide A)] + [(amount of radionuclide B) (quantity of concern of radionuclide B)] + etc. .....>1.

Guidance for Aggregation of Sources

NRC supports the use of the IAEA's source categorization methodology as defined in TECDOC–1344, ''Categorization of Radioactive Sources,'' (July 2003) (see *http://www-pub.iaea.org/MTCD/publications/PDF/te_1344_web.pdf*) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Increased controls apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement increased controls. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement increased controls.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes: When are sources considered collocated for purposes of aggregation? For purposes of the additional controls, sources are considered collocated if breaching a single barrier (*e.g.*, a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (*e.g.*, a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12 0.2) + (0.18 0.3) + (0.3 0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require increased controls.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require increased controls, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require increased controls while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (*e.g.*, a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage—''operations'' (active source usage) and ''shutdown'' (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require increased controls for each location.

[FR Doc. E5–6718 Filed 11–30–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–PX; SEC File No. 270–524; OMB Control No. 3235–0582.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title of the collection of information is ''Form N–PX under the Investment Company Act of 1940, Annual Report of Proxy Voting Record.'' Rule 30b1–4 under the Investment Company Act of 1940 (''Investment Company Act'') requires every registered management investment company, other than a small business investment company (''Fund''), to file Form N–PX not later than August 31 of each year. Funds use Form N–PX to file annual reports with the Commission containing their complete proxy voting

record for the most recent twelve-month period ended June 30. Funds also use Form N–PX to inform the Commission that certain of their portfolios do not hold any equity securities and have no proxy record to file.

The Commission requires the dissemination of this information in order to meet the filing and disclosure requirements of the Investment Company Act and to enable Funds to provide investors with the information necessary to evaluate an investment in the Fund. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information. Requiring a Fund to file its annual reports of Form N–PX has the advantages of making each Fund's proxy voting record available within a relatively short period of time after the proxy voting season, and of providing disclosure of all Funds' proxy voting records over a uniform period of time.

There are approximately 3,700 Funds registered with the Commission, representing 7,900 Fund portfolios, which are required to file one Form N–PX each year. Those 7,900 portfolios are comprised of 5,000 portfolios holding equity securities and 2,900 portfolios holding no equity securities. The staff estimates that filing a response that states that the portfolio does not hold equity securities will require a 10 minute burden per response. The burden for portfolios holding equity securities is estimated to be 14.4 hours per response. The total annual reporting and recordkeeping burden is estimated to be approximately 72,483 hours ((5,000 responses × 14.4 hours per response for equity-holding portfolios) + (2,900 × 10 minutes per response for portfolio holding no equity securities)).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: November 23, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6725 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 34b–1; File No. 270–305; OMB Control No. 3235–0346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 34b–1 (17 CFR 270.34b–1) under the Investment Company Act of 1940, Sales Literature Deemed to be Misleading.

Rule 34b–1 under the Investment Company Act [17 CFR 270.34b–1] governs sales material that accompanies or follows the delivery of a statutory prospectus (''sales literature''). Rule 34b–1 deems to be materially misleading any investment company sales literature, required to be filed with the Commission by section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)],[1] that includes performance data unless it also includes the appropriate uniformly computed data and the legend disclosure required in advertisements by rule 482 under the Securities Act of 1933 [17 CFR 230.482].

Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

The Commission estimates that 4,500 respondents file approximately 37,000 responses with the Commission, which include the information required by rule 34b–1. The burden from rule 34b–1 requires slightly more than 2.4 hours per response resulting from creating the information required under rule 34b–1.[2] The total burden hours for rule 34b–1 is 89,143 per year in the aggregate (37,000 responses × 2.4092702 hours per response). Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: November 23, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6726 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

[1] Sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Investment Company Act upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. *See* Rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3].

[2] The estimated burden per response is 2.9 hours for 686 responses and 2.4 hours for the remaining, giving a more exact weighted average burden per response of approximately 2.4092702.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52840; File No. 81–934]

Order Granting an Application of Global Industries, Ltd. Under Section 12(h) of the Securities Exchange Act of 1934

November 28, 2005.

Global Industries, Ltd. has filed an application under section 12(h) of the Securities Exchange Act of 1934, as amended. Global Industries has asked the Commission to extend the due date for Global Industries's Form 10–Q for the quarter ended September 30, 2005 to November 29, 2005. Global Industries states that its principal executive offices are located in Carlyss, Louisiana, which is within one of the Presidentially Declared Disaster Areas for both Hurricane Katrina and Hurricane Rita. In its application, Global Industries asserts that an extension of the due date for Global Industries's Form 10–Q for the quarter ended September 30, 2005 is necessary due to, among other things, the mandatory evacuations and the extraordinary disruptions to Global Industries's facilities, personnel, and information technology resources caused by Hurricane Rita.

On November 4, 2005, the Commission issued a notice of the filing of the application giving interested persons until November 25, 2005 an opportunity to request a hearing and stating that an order disposing of the application might be issued upon the basis of the information stated therein unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Exchange Act.

It is ordered, pursuant to section 12(h) of the Exchange Act, that the application to extend the due date for Global Industries's Form 10–Q for the quarter ended September 30, 2005 to November 29, 2005 be, and hereby is, granted, effective immediately.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6729 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–15097]

Issuer Delisting; Notice of Application of Lynch Interactive Corporation To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

November 25, 2005.

On November 7, 2005, Lynch Interactive Corporation, a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On November 3, 2005, the Board of Directors (''Board'') of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated that the Board believes it is in the best interest to withdraw the Security from listing and registration on Amex. The Board approved a 1 for 100 reverse stock split of the Security, and granted the Issuer an option to acquire any shares of the Security proposed to be transferred in order to keep the number of record holders of the Security below 300 (''Issuer's Option''). The Issuer stated that the stockholders approved the reverse stock split and the Issuer's Option on October 31, 2005.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and providing written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 20, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–15097 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–15097. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23543 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–07708]

Issuer Delisting; Notice of Application of Marlton Technologies, Inc. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the American Stock Exchange LLC

November 25, 2005.

On November 9, 2005, Marlton Technologies, Inc., a Pennsylvania company (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

On November 4, 2005, the Board of Directors (''Board'') of the Issuer unanimously approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated that the Board is taking such action for the following reasons: (i) The Board has conducted a thorough review of the Issuer's current standing internally and in the market and has determined that the costs to the Issuer of public reporting company status outweigh the corresponding benefits; (ii) the Board had voted to approve a plan to effect a 1 for 5,000 reverse stock split of the Security with the purpose of bringing the number of record holders below 300 to allow the Issuer to deregister the Security as a class under the Act; (iii) on September 28, 2005, the Issuer filed a preliminary proxy statement with the Commission to announce a special meeting of shareholders of the Issuer scheduled for December 19, 2005 to seek shareholder approval of the proposed reverse stock split; and (iv) provided that the reverse stock split is effected and the number of holders of record of the Security falls below 300, the Board has determined it to be in the Issuer's best interest to deregister the Security from the Act. The Issuer stated that it expects the Security to trade in the over-the-counter market and quote on the Pink Sheets following the withdrawal of the Security from Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the Commonwealth of Pennsylvania, in which it is incorporated, and providing written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before December 20, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–07708 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–07708. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6733 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52812; File No. SR–Amex–2005–118]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Options Licensing Fee for Options on Certain StreetTRACKS Exchange-Traded Funds and the SPDR Dividend Exchange-Traded Fund

November 21, 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 14, 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 Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to modify its Options Fee Schedule by adopting a per-contract license fee for the orders of specialists, registered options traders, firms, non-member market makers, and broker-dealers (collectively, ''Market Participants'') in connection with options transactions in five new streetTRACKS exchange-traded funds (''ETFs'') and the SPDR Dividend ETF.

The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.amex.com*), at the Exchange'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, 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 has entered into numerous agreements with various

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

index providers for the purpose of trading options on certain ETFs. As a result, the Exchange is required to pay index license fees to third parties as a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has recently established per-contract licensing fees for orders of Market Participants that are collected on each option transaction in certain designated products in which such Market Participant is a party.[5]

The purpose of the proposal is to charge options licensing fees in connection with options on the following streetTRACKS ETFs: (1) streetTRACKS DJ Wilshire Small Cap ETF (symbol: DSC); (2) streetTRACKS DJ Wilshire Large Cap ETF (symbol: ELR); (3) streetTRACKS DJ Wilshire Mid Cap ETF (symbol: EMM); (4) streetTRACKS DJ Wilshire Mid Cap Growth ETF (symbol: EMG); and (5) streetTRACKS DJ Wilshire Mid Cap Value ETF (symbol: EMV) (collectively, ''streetTRACKS ETFs''). In addition, the Exchange also proposes to charge an options licensing fee in connection with options on the SPDR Dividend ETF (symbol: SDY) (''SPDR ETF''). Specifically, Amex seeks to charge an options licensing fee of $0.10 per contract side for each streetTRACKS ETF option and $0.09 per contract side for each SPDR ETF option, for the order of a Market Participants executed on the Exchange. In all cases, the fee would be charged only to the Exchange member through whom such order is placed.

Amex represents that the proposed options licensing fees would allow the Exchange to recoup its costs in connection with the index license fees for the trading of streetTRACKS ETF and SPDR ETF options. The fees would be collected on every Market Participant order executed on the Exchange. The Exchange believes that requiring the payment of a per-contract licensing fee in connection with streetTRACKS ETF and SPDR ETF options by those Market Participants that benefit from the index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that, in recent years, it has revised a number of its fees to better align Amex fees with the actual cost of delivering services and reduce Amex's subsidization of such services.[6] The Exchange represents that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex believes that these fees will help to allocate to those Market Participants engaging in transactions in streetTRACKS ETF and SPDR ETF options a fair share of the related costs of offering such options for trading.

The Exchange asserts that the proposal provides for an equitable allocation of fees as required by section 6(b)(4) of the Act.[7] In connection with the adoption of options licensing fees for streetTRACKS ETF and SPDR ETF options, the Exchange notes that charging the options licensing fees, where applicable, to all Market Participant orders, except for customer orders, is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing trading products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(4) of the Act[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 No. SR–Amex–2005–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–118. 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 Commissions 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

[5] *See* Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

[6] *See, e.g.*, Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); Securities Exchange Act Release No. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

[7] Section 6(b)(4) of the Act states that the rules of a national securities exchange must ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.'' 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 19b–4(f)(2).

Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–118 and should be submitted on or before December 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6727 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52837; File No. SR–Amex–2005–056]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Requirement That Registered Options Traders May Only Sign on to Auto-Ex for ETFs Traded by the Same or Adjoining Specialists and Shall Sign on to Auto-Ex for a Maximum of Fifteen ETFs

November 25, 2005.

On May 23, 2005, the American Stock Exchange LLC (''Amex'' 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 provide that Registered Options Traders (''ROTs'') may only sign on to Auto-Ex[3] for a maximum of fifteen Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts (collectively, ''Exchange-Traded Funds'' or ''ETFs'') and only if such ETFs are traded by the same or adjoining specialists for a maximum of three contiguous panels (*i.e.*, electronic order book work stations).[4] On September 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on September 30, 2005.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Amex Rule 958(c) and Amex Rule 958(c)–ANTE currently require ROTs to make competitive bids and offers necessary to contribute to the maintenance of a fair and orderly market and to engage, to a reasonable degree, in dealings for their own accounts when there exists a lack of price continuity and a temporary disparity between the supply and demand of ETFs. As part of their market making activities in ETFs, ROTs may sign on to Auto-Ex.

The proposed rule change would amend Amex Rule 958, Commentary .10, and Amex Rule 958–ANTE, Commentary .09, to state that, if an ROT logs on to Auto-Ex for ETFs, the ROT would only be permitted to log on to Auto-Ex for ETFs traded on the same or contiguous panels, *i.e.*, ETFs traded by the same or adjoining specialists, for a maximum of three contiguous panels. The proposal also would limit an ROT to trading in a maximum of fifteen ETFs while signed on to Auto-Ex.[7] A Senior Floor Official would be permitted to modify these restrictions if he or she determines that an ROT is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of section 6(b) of the Act[9] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[10] in that it is 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.

In exchange for receiving certain benefits for carrying out their duties as market makers, ROTs have affirmative obligations, one of which is incorporated in current Amex Rule 958(c) and Amex Rule 958(c)–ANTE, which require ROTs to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market. The Exchange believes that, in order to make competitive bids and offers in an ETF, ROTs must be present in the crowd near the specialist panels for such ETF. ROTs logged on to Auto-Ex are entitled to receive executions at the specialist's quote but are not currently required to be present in the crowd. If an ROT is logged onto Auto-Ex panels throughout the trading floor, the ROT is less likely to be physically present in the trading crowd for a particular ETF, thus making it less likely that the ROT is able to make competitive bids and offers in such ETF because, in order to make competitive bids and offers, a ROT must be physically present in the trading crowd near the specialist panel for that ETF. The proposed rule change, by limiting the ROTs ability to log on to Auto-Ex to a maximum of three contiguous Auto-Ex panels, would confine the ROT to one area of the floor, thus encouraging the ROT to remain in the trading crowd for a particular ETF that such ROT is entitled to receive automatic executions at the specialist's quote. In this regard, the Commission believes that the proposed rule change should help ensure that ROTs fulfill their market maker obligations to make competitive bids and offers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Amex–2005–056), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6728 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Auto-Ex is the Exchange's automated execution system.

[4] The Exchange stated that each panel has one specialist assigned to it and that numerous ETFs may be traded on each panel.

[5] *See* Form 19b–4 dated September 13, 2005, which replaced the original filing in its entirety (''Amendment No. 1'').

[6] Securities Exchange Act Release No. 52505 (September 23, 2005), 70 FR 57226.

[7] Although ETFs are traded on NETS (New Equity Trading System) and not ANTE (Amex New Trading Environment), Amex Rule 958–ANTE applies to ETFs.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52830; File No. SR–OCC–2005–15]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rejection of Erroneous Post-Trade Instructions

November 23, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 26, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2) thereunder[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change will authorize OCC to reject all types of post-trade transactions when OCC determines, in its sole discretion, that the input regarding the adjustment or other transaction contains an error or omission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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 self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend Article VI, Section 1, of its By-Laws by adding paragraph (c) to Interpretations and Policies .01 and will amend Rule 403(b) to expressly authorize OCC to reject all types of post-trade transactions that OCC determines, in its sole discretion, that the input regarding the adjustment or other transaction contains an error or omission.

OCC occasionally receives instructions from clearing members attempting to effect post-trade transactions, such as clearing member trade assignment (''CMTA'')[5] transfers and position adjustments, that appear to be erroneous and that if not corrected would create large settlement obligations that could pose substantial credit risk for OCC. For example, recently an OCC clearing member submitted a CMTA transfer instruction specifying a premium value of $6,500 instead of $1.65 that would have produced a $5 billion settlement requirement. Such mistakes are ordinarily corrected by communicating with the clearing member or clearing members involved. However, OCC may not always be able to contact the affected parties or to obtain a timely agreement as to the appropriate corrective measure.

Currently, OCC's By-Laws and Rules do not expressly authorize OCC to reject post-trade transactions when OCC determines that the input regarding such transactions contains an error or omission.[6] Unlike option exchange transactions, for which it is OCC's general policy not to reject, post-trade transactions have not been examined for errors through the trade matching process and, therefore, are more vulnerable to errors and omissions.

OCC believes that the proposed changes are consistent with the purposes and requirements of section 17A of the Act[7] because such changes are designed to enable OCC to safeguard securities and funds in its possession or control for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC believes that the proposed rule change will not impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[8] and Rule 19b–4(f)(1)[9] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2005–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–9303.

All submissions should refer to File Number SR–OCC–2005–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] For an explanation of CMTA, refer to Securities Exchange Act Release No. 51350 (Mar. 9, 2005), 70 FR 12934 (Mar. 16, 2005).

[6] In contrast, OCC Rules 614(c) and (e) authorize OCC to reject erroneous instructions for pledge positions and to release pledged positions, and OCC Rule 2202 enables OCC to reject erroneous stock loan transactions.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

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 also will be available for inspection and copying at OCC's principal office and on OCC's Web site at *http://www.optionsclearing.com/publications/rules/proposed_changes/proposed_changes.jsp.* 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–OCC–2005–15 and should be submitted on or before December 22, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6731 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52827; File No. SR–PCX–2005–56]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Directed Order Process and the Establishment of Designated Market Makers and Lead Market Makers

November 23, 2005.

I. Introduction

On April 21, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 modify its rules governing the Directed Order Process on the Archipelago Exchange (''ArcaEx'').[3] The PCX filed Amendment No. 1 to the proposed rule change on October 4, 2005.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 13, 2005.[5] The Commission received no comments from the public in response to the proposed rule change. The PCX filed Amendment No. 2 to the proposed rule change on November 17, 2005.[6] This order approves the proposed rule, as amended by Amendment No. 1; grants accelerated approval to Amendment No. 2; and solicits comments from interested persons on Amendment No. 2.

II. Description

The PCX proposed to add two new classifications of Market Makers, Designated Market Makers (''DMMs'') and Lead Market Makers (''LMMs''), in connection with ArcaEx's Directed Order Process. Under the proposal, only DMMs and LMMs would be eligible to receive orders in ArcaEx's Directed Order Process. DMMs would be required to meet certain selection criteria and ongoing performance criteria, making them eligible to participate in the Directed Order Process. LMMs would be granted exclusive eligibility to receive Directed Orders and would be held to higher ongoing performance standards than DMMs in listings for which ArcaEx is the primary market. Such ongoing performance standards would include (i) percent of time the DMM is quoting at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the event the security is a derivative security, the ability of the DMM to transact in the underlying markets. LMMs would be held to higher ongoing performance standards than DMMs. Although the Exchange would have the ability to apply specific levels to be used in defining the performance standards, the Exchange would not modify the types of standards to be used without changing its rules. The Exchange also proposed to amend PCXE Rule 7.22 to provide the Corporation with the ability to limit the number of DMMs with prior written notice to ETP Holders. Lastly, PCXE Rule 7.25 would be modified to require LMMs to register as Odd Lot Dealers in the securities in which they are registered as LMM.

The PCX also sought to modify its Directed Order process in a number of ways. First, the Exchange proposed to add a provision that requires Users[7] to be given permission by DMMs in order to send a Directed Order to that DMM. The Exchange also proposed to eliminate the provision limiting the Directed Order Process to the Core Trading Session and proposed to eliminate a provision that suspends the Directed Order Process when a locked or crossed market exists in a security. In addition, the amendment to the definition would also make clear that a Directed Fill specifies the size and price of the Directed Fill.

The Exchange also proposed that marketable Directed Orders would first attempt to match against the DMM to which the order has been directed, but that, prior to execution, Directed Orders matched against DMMs pursuant to their Directed Fill instructions first would be executed against any displayed order in the Arca Book priced at or better than the terms of the Directed Fill before executing as a directed match.[8] If such matched orders are broken up by orders on the Arca Book, the remaining portion of the Directed Order would be posted in the Arca Book. Lastly, the Exchange proposed to delete a reference in the Directed Order Process rules restricting the price at which executions can occur within the Directed Order Process.

In Amendment No. 2, the Exchange proposed to remove provisions in PCXE Rule 7.34(d) that limit the availability of the Directed Order Process during the Opening Session and Late Trading Session.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rules 7.31 and 7.37.

[4] Amendment No. 1 replaced and superseded the original filing in its entirety.

[5] *See* Securities Exchange Act Release No. 52566 (October 5, 2005), 70 FR 59791.

[6] Amendment No. 1 clarified language in PCXE Rule 7.34(d).

[7] *See* PCXE Rule 1.1(yy).

[8] Accordingly, a Directed Order would only execute against a Directed Fill at a price superior to the Arca best bid or offer.

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–PCX–2005–56 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–56. 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, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–56 and should be submitted on or before December 22, 2005.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of section 6(b)(5) of the Act,[10] which requires, among other things, that a national securities exchange's rules be designed to prevent fraud and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and; in general, to protect investors and the public interest.

Under the proposal, the two new classifications of Market Makers, DMMs and LMMs, would be entitled to receive Directed Orders. In exchange for this benefit, the Exchange would subject DMMs and LMMs to certain selection criteria and ongoing performance standards. In addition, DMMs and LMMs must comply with obligations currently set forth in the Exchange's rules. In particular, DMMs and LMMs would be required to maintain continuous two-sided Q Orders in those securities in which they are eligible to receive Directed Orders and to engage in a course of dealings to assist in the maintenance of fair and orderly markets. The Commission believes that providing the benefit of receiving Directed Orders to DMMs and LMMs while in turn holding DMMs and LMMs to increased obligations to the market is consistent with the Act. The Commission notes that the Exchange would hold an LMM to higher standards than a DMM. The Commission believes that applying a higher standard to LLMs is appropriate because LMMs would have exclusive access to participate in the Directed Order Process as a Market Maker for primary listings.

The Commission also believes that the amendments to the operation of the Directed Order Process are consistent with the Act. In this regard, the Commission notes that if there is an order displayed on the Arca Book at a price that is at or better than the price of a Directed Fill, the Directed Order would not execute against the Directed Fill. Further, the Commission notes that executions in the Directed Order process may not take place at prices inferior to the NBBO.[11] Accordingly, in order for a DMM or LMM to receive a Directed Order execution, the DMM or LMM must improve the best displayed price on the Arca Book, and such price must be equal to or better than the NBBO.

The Commission emphasizes that approval of this proposal does not affect a broker-dealer's duty of best execution. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and any decision to preference a particular DMM or LMM must be consistent with this duty.[12] A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in Self-Regulatory Organization rules and, through judicial and Commission decisions, the antifraud provisions of the Federal securities laws.[13]

The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.,* at the best reasonably available price.[14] The duty of best execution requires broker-dealers to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders.[15] Broker-dealers

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* PCXE Rule 7.37.

[12] *See, e.g, Newton* v. *Merrill, Lynch Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 269–70, 274 (3d Cir.), cert. denied, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq,* Securities Exchange Act Release No. 40900 (January 11, 1999) (settled case) (citing *Sinclair* v. *SEC,* 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes,* 27 SEC 629, 636 (1948), *aff'd sub nom. Hughes* v. *SEC.* 174 F.2d 969 (D.C. Cir. 1949)). *See also* Order Execution Obligations, Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Handling Rules Release'').

[13] Order Handling Rules Release, 61 FR at 48322. *See also Newton,* 135 F3.d at 270. Failure to satisfy the duty of best execution can constitute fraud because a broker-dealer, in agreeing to execute a customer's order, makes an implied representation that it will execute it in a manner that maximizes the customer's economic gain in the transaction. *See Newton,* 135 F.3d at 273 (''[T]he basis for the duty of best execution is the mutual understanding that the client is engaging in the trade—and retaining the services of the broker as his agent—solely for the purpose of maximizing his own economic benefit, and that the broker receives her compensation because she assists the client in reaching that goal.''); *Marc N. Geman,* Securities Exchange Act Release No. 43963 (February 14, 2001) (citing *Newton,* but concluding that respondent fulfilled his duty of best execution). *See also* Payment for Order Flow, Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55009 (Nov. 2, 1994) (''Payment for Order Flow Final Rules''). If the broker-dealer intends not to act in a manner that maximizes the customer's benefit when he accepts the order and does not disclose this to the customer, the broker-dealer's implied representation is false. *See Newton,* 135 F.3d at 273–274.

[14] *Newton,* 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n. 2 (citing Payment for Order Flow, Securities Exchange Act Release No. 33026 (October 6, 1993), 58 FR 52934, 52937–38 (October 13, 1993) (Proposed Rules)). *See In re E.F. Hutton & Co.* (''Manning''), Securities Exchange Act Release No. 25887 (July 6, 1988). *See also Payment for Order Flow Final Rules, 59 FR at 55008–55009.*

[15] Order Handling Rules Release, 61 FR at 48322–48333 (''In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer

must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.[16] In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.[17]

Furthermore, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[18] Amendment No. 2 clarified that the Exchange proposed to make the Directed Order Process available during the Opening Session and the Late Trading Session. The Commission does not believe that Amendment No. 2 materially affects the original proposed rule change, as amended, or that it presents any novel regulatory issues. Accordingly, the Commission finds good cause to accelerate approval of Amendment No. 2.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–PCX–2005–56), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 is approved on an accelerated basis.

must regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security.''). *See also Newton,* 135 F.3d at 271; Market 2000: An Examination of Current Equity Market Developments V–4 (SEC Division of Market Regulation January 1994) (''Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order.''); Payment for Order Flow Final Rules, 59 FR at 55009.

[16] Order Handling Rules, 61 FR at 48323.

[17] Order Handling Rules, 61 FR at 48323. For example, in connection with orders that are to be executed at a market opening price. ''[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders.'' Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75422 (December 1, 2000) (adopting new Rules 11Ac1–5 and 11Ac1–6 under the Act and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

[18] 15 U.S.C. 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6732 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52817; File No. SR–Phlx–2005–47]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Reduce the Value of the Nasdaq Composite Index® Underlying the Options Traded Under the Symbol QCE

November 22, 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 9, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On November 18, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Phlx filed the proposal pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] 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 Phlx proposes to decrease by a factor of ten (10) the value of the index that underlies the options that are approved to trade on the Exchange under the symbol QCE (''QCE Options'') and thereby decrease the strike prices for the QCE Options, in order to eliminate investor confusion between the QCE Options and the QCX Options.[7] The proposed decrease would be achieved by multiplying the Adjusted Base Period Market Value that is applied to the index underlying the QCE Options (''QCE Index'') by ten. The position and exercise limits applicable to QCE Options (currently 300,000 contracts on either side of the market in the near-term months) would remain unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In December 2003, the Commission approved Phlx's proposed rule change to trade full-value options on the Nasdaq Composite Index®[8] under the

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii). *See* 17 CFR 240.19b–4(f)(6)(iii). *See also* discussion *infra* section III.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Phlx has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See supra* note 3.

[7] *See infra* section II.A.1 for the definition of ''QCX Options'' and for the general background.

[8] The composite index is a cash-settled, capitalization-weighted, broad-based, A.M. settled index composed of approximately 3,400 stocks listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq''). Nasdaq®, Nasdaq Composite® and Nasdaq Composite Index® are registered trademarks of The Nasdaq Stock Market, Inc. (which with its affiliates are the ''Corporations'') and are licensed for use by the Philadelphia Stock Exchange. The product(s) described herein have not been passed on by the Corporations as to their legality or suitability. The product(s) are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the product(s).

The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq Composite Index® or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by the exchange, owners of the product(s), or any other person or entity from the use of the Nasdaq Composite Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantiability or fitness for a particular purpose or use with respect to the Nasdaq Composite Index® or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages.

symbol QCX (''QCX Options'') and reduced-value options on the Nasdaq Composite Index® under the symbol QCE.[9] Both the QCE Options and QCX Options were based on the full-value Nasdaq Composite Index® and had identical strike prices, but the Premium Quotation Multiplier for QCX was 100 and the Premium Quotation Multiplier for QCE was 10. The Exchange has heard from a number of market participants that investors in QCE Options and QCX Options have become confused and not willing to trade these products because the identical options strike prices and similar ticker symbols tend to create the possibility of placing a mistaken order.[10] As a result of this investor confusion, trading in the QCE and QCX Options diminished, and the Exchange delisted both the QCE and QCX Options on or about March 21, 2005.

The purpose of the proposed rule change is to reduce the value of the QCE Index by a factor of ten and thereby effectively reduce the strike price of QCE Options in order to eliminate investor confusion between the QCE Options and the QCX Options. By reducing the value of the QCE Index by a factor of ten, investors in QCE Options would see a similar reduction in the strike prices of QCE Options contracts, and would be less likely to be confused between the QCE and QCX Options products.

For example, as of October 27, 2005, the value of the Nasdaq Composite Index® was 2063.50, and a near-month at-the-money call premium for the QCE Option would have been at a minimum its intrinsic value of $63.50 per contract.[11] The Exchange proposes to reduce the value of the QCE Index to one-tenth of the value of the Nasdaq Composite Index®, or 206.35, which would effectively be a ''ten-for-one split.'' This would be achieved by multiplying the Adjusted Base Period Market Value, the divisor used to calculate the QCE Index, by ten. In order to maintain a proper economic ratio between the two options (that is, QCX Options are ten times the value of QCE Options), each QCE Option contract would be assigned a strike price of one-tenth of the original strike price. In addition, the Premium Quotation Multiplier, which is currently $100.00 for QCX Options and $10.00 for QCE Options, will be increased to $100.00 for QCE Options to maintain a reasonable equivalence in the options premium in relation to the new strike prices. Thus, for example, a hypothetical option buyer of one QCE 2000 call *prior* to the date of effectiveness of this proposed rule change would have been quoted a premium of $63.50; after applying the Premium Quotation Multiplier of $10.00, such option buyer would have paid a premium of $635.00. Similarly, a hypothetical option buyer of one QCE 200 call *subsequent* to the date of effectiveness of this proposed rule change would be quoted a premium of $6.35; after applying the Premium Quotation Multiplier of $100.00, such option buyer would pay a premium of $635.00. As a result, the premium paid, after applying the Premium Quotation Multiplier, would be $635.00 both before and after the date of effectiveness of this proposed rule change. The position and exercise limits applicable to QCE Options would remain unchanged. The options trading symbol would remain QCE.

The Exchange will list the new, lower strike prices for QCE Options pursuant to Phlx Rule 1101A, Terms of Option Contracts. The Exchange will announce the effective date of the proposed rule change by way of an Exchange memorandum to the membership, also serving as notice of the strike price changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5) of the Act,[13] in particular, because it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by establishing a lower index value for the QCE Index which should, in turn, eliminate customer confusion and facilitate trading in QCE Options. The Exchange believes that reducing the value of the QCE Index should not raise manipulation concerns or cause adverse market impact because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the index value adjustment, which includes providing adequate prior notice to market participants.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(i) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

[9] *See* Securities Exchange Act Release No. 48884 (December 5, 2003), 68 FR 69753 (December 15, 2003).

[10] As approved in 2003, a QCE Option contract is one-tenth the size of a QCX Option contract. Customarily, strike prices for a full-size options contract and a reduced-size options contract would also differ by a factor of ten. However, since both QCE and QCX Options were linked to the same value of the Nasdaq Composite Index®, the strike prices for QCE and QCX Options were identical.

[11] While QCX and QCE Options are currently delisted and not trading, Nasdaq has agreed to continue to calculate and disseminate the value for both the full-value Nasdaq Composite Index® and the QCE Index, and has been doing so since July 1, 2005, to enable the trading of options overlying the indexes. Nasdaq will continue to disseminate these index values at least once every fifteen seconds during the normal trading day. The Exchange understands that in calculating and disseminating these index values, Nasdaq will synchronize the timing of changes in the indexes so that they occur simultaneously in both indexes, and the smaller QCE Index will at all times be one-tenth the value the larger Nasdaq Composite Index®, to negate arbitrage opportunities.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] The Exchange further believes that reducing the value of the QCE Index should not impact investors because at the present time there is no open interest or trading in QCE Options overlying such index.

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(6).

The Phlx has asked the Commission to waive the 30-day operative delay to allow the Exchange to promptly decrease the value of the QCE Index that underlies the QCE Options so that trading in the QCE and QCX Options may re-commence. The Commission has determined to waive the 30-day operative delay period.[17] The Commission believes that waiving the 30-day operative delay period is consistent with the protection of investors and the public interest because it will allow the Exchange to re-list the QCE and QCX Options products in a more timely manner with a reduced risk of investors confusing the two products and placing mistaken orders.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

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 No. SR–Phlx–2005–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–Phlx–2005–47. 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 will also be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2005–47 and should be submitted on or before December 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6730 Filed 11–30–05; 8:45 am]

BILLING CODE 8010–01–P

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] The effective date of the original proposed rule change is November 9, 2005, and the effective date of Amendment No. 1 is November 18, 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 such period to commence on November 18, 2005, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Owensboro-Daviess County Regional Airport, Owensboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), the Federal Aviation Administration is requesting public comment on the Owensboro-Daviess County Regional Airport Board's request to change a portion (2.362 acres) of airport property from aeronautical use to non-aeronautical use. The property is to be sold to The City of Owensboro, Kentucky for the completion of a connector walkway to David C. Adkisson Greenbelt Park.

The 2.362 acres is located on the northeast boundary of Owensboro-Daviess County Regional Airport; adjacent to and immediately west of the Wendell Ford Expressway, adjacent to and immediately south of Bittel Road, Daviess County, Kentucky.

DATES: Comments must be received on or before January 3, 2006.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tim Bradshaw, Manager, Owensboro-Daviess County Airport at the following address: 2200 Airport Road, Owensboro, Kentucky 42301.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Airports Program Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555, (901) 322–8185. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Owensboro-Daviess County Regional Airport Board to release 2.362 acres of aeronautical property at Owensboro-Daviess County Regional Airport, Owensboro, Kentucky. The property will be released to The City of Owensboro, Kentucky for the completion of a connector walkway to David C. Adkisson Greenbelt Park. The City of Owensboro, Kentucky provides annual appropriations for the operation and maintenance of Owensboro-Daviess County Airport, and over the past six (6) years has done so in the amount of $403,792. The appraised value of the 2.362 acres is approximately $62,400. Therefore, release of the property to the City of Owensboro will be zero. A detailed legal description of the property proposed for release can be requested or seen at either of the contacts given above. However, the general description is the 2.362 acres is located on the northeast boundary of Owensboro-Daviess County Regional Airport; adjacent to and immediately west of the Wendell Ford Expressway, adjacent to and immediately south of Bittel Road, Daviess County, Kentucky.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the

request in person at the Elizabethtown Airport Board.

Issued in Memphis, Tennessee, on November 23, 2005.

Charles L. Harris,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 05–23525 Filed 11–30–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Shawnee Regional Airport, Shawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: FAA proposes to rule and invites public comment on the release of land at Shawnee Regional Airport under the provisions of Title 49 of US Code, Section 47153.

DATES: Comments must be received on or before January 2, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward N. Agnew, Manager, Airports Development Office, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Collard, City Manager, at the following address: PO Box 1448, Shawnee, OK 74802–1448.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Senior Program Manager, Federal Aviation Administration, Arkansas/Oklahoma Airports Development Office, ASW–631, 2601 Meacham Blvd., Fort Worth, Texas 76193–0630.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Shawnee Regional Airport under the provisions of the Act.

On November 23, 2005, the FAA determined that the request submitted by the City of Shawnee to release property at Shawnee Regional Airport met the procedural requirements of Federal Aviation Regulation Part 155. The FAA may approve the request, in whole or in part, no later than January 5, 2006.

The following is a brief overview of the request: The Shawnee Airport Authority requests the release of 8.2 acres of airport property. The sale is estimated to provide $156,800.00 to allow construction of an early childhood development center for the City of Shawnee. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Shawnee Regional Airport.

Issued in Fort Worth, Texas, on November 23, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–23526 Filed 11–30–05; 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, Operating Requirements: Domestic, Flag, and Supplemental Operations, Part 121

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) renewal of a current information collection. The **Federal Register** Notices with a 60-day comment period soliciting comments on the following collection of information was published on July 27, 2005, vol. #143, pages 43502–43503. 14 CFR Part 121 prescribes the requirements governing air carrier operations. The information collected is used to determine air operators' compliance with the minimum safety standards set out in the regulation and the applicant's eligibility for air operations certification.

DATES: Please submit comments by January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Operating Requirements: Domestic, Flag, and Supplemental Operations, Part 121.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0008.

Forms(s): A total of 100 Part 121 Aircraft Operators.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: There are 33 different sections of the Part 121 regulation requiring a paperwork burden covered by this collection, with varying burden per response.

Estimated Annual Burden Hours: An estimated 1,298,589 hours annually.

Abstract: 14 CFR Part 121 prescribes the requirements governing air carrier operations. The information collected is used to determine air operators' compliance with the minimum safety standards set out in the regulation and the applicant's eligibility for air operations certification.

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 November 21, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–23527 Filed 11–30–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; I–395/Route 9 Transportation Study; Penobscot County, ME

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in the towns of Brewer, Holden, Eddington, and Clifton, Maine.

FOR FURTHER INFORMATION CONTACT: Mark Hasselmann, Right of Way and Environmental Programs Manager, Maine Division, Federal Highway Administration, 40 Western Ave., Augusta, Maine 04330, Tel. 207/622–8350, ext. 101; Raymond Faucher, Project Manager, Maine Department of Transportation, 16 State House Station, Augusta, Maine 04333–0016, Tel. 207/624–3300.

SUPPLEMENTARY INFORMATION: On October 11, 2005, FHWA Maine Division notified MaineDOT that they completed their review of the preliminary Environmental Assessment (EA) including the history and issues involving the I–395/Route 9 Transportation Study. Based on the review, FHWA determined that an EIS is required before location and design approval. The FHWA determination to elevate the I–395/Route 9 Transportation Study NEPA documentation requirements from an EA to an EIS is based on:

- 23 CFR 771.115 identification of a new controlled access freeway and highway projects of four or more lanes normally requiring an EIS; approximate corridor length 10.5 miles,
- The proposed 43.2 acres of wetland impacts exceeding historical MaineDOT annual statewide total for wetland impacts,
- The potential difficulty in identifying compensatory mitigation opportunities within the Study Area, and
- The resource agencies request for additional information on indirect and cumulative impacts and the potential for habitat fragmentation.

The FHWA, in cooperation with the Maine Department of Transportation, will prepare an EIS that analyzes alternatives to identify a Preferred Alternative to meet future transportation needs. The alternative identification and analysis from the preliminary EA will provide the foundation to further the evaluation of upgrades of the existing roadway system, alignments on new location, and the No-build Alternative. The EIS will examine alternatives to improve transportation system linkage, safety, and mobility between Interstate 395 (I–395), Brewer and State Route 9 (Route 9), Clifton in southern Penobscot County, Maine.

This project was initiated as an EA. Agency scoping and early coordination was initiated in December of 2000; letters describing the proposed action and soliciting comments were sent to appropriate Federal, State, and local agencies and the municipalities in accordance with the procedural provisions of the National Environmental Policy Act and FHWA's and MaineDOT's requirements and policies for scoping and early coordination. The I–395/Route 9 Transportation Study was presented to the federal and state regulatory and resource agencies at eight MaineDOT monthly Interagency coordination meetings between January 2000 and July 2005. Public participation, initiated early in the EA process, has included 17 meetings of a Public Advisory Committee (PAC), two public meetings and an interactive Web site, <*http://www.i395-rt9-study.com*>. The first PAC meeting was held in September 2000. A public scoping and informational meeting was held on April 11, 2001. A second public meeting was held on September 19, 2001 to present the range of alternatives considered for satisfying purpose and need, preliminary alternatives screening, and the range of alternatives retained for further consideration.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and private organizations that have previously expressed or are known to have interest in the proposed action. All public and agency comments, including early scoping comments, received during the EA process will be addressed in the EIS. The draft EIS will be available for public and agency review and comment prior to a public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA and/or MaineDOT at the addresses provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

FHWA anticipates that the following Federal approvals will be necessary for the project:

Clean Water Act Section 404 permit
Design, Right of Way, and Construction
Funding Authorization

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 22, 2005.

Jonathan McDade,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 05–23529 Filed 11–30–05 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2005–22174]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval form the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 30, 2006.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested but not required that two copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of this request for collection of information may be obtained at no charge from Donna Glassbrenner, PhD., Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 6125, NPO–121, Washington, DC 20590. Dr. Glassbrenner's telephone number is (202) 366–3962. Please identify the relevant collection of information by referring to its Docket Number above.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995,

before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to 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, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: National Survey of the Use of Booster Seats.

OMB Control Number: 2127–0644.

Affected Public: Motorists in passenger vehicles at gas stations, fast food restaurants, and other types of sites frequented by children during the time in which the survey is conducted.

Form Number: NHTSA 1010.

Abstract: The National Survey of the Use of Booster Seats is being conducted to respond to the Section 14(i) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. The Act directs the Department of Transportation to reduce the deaths and injuries among children in the 4- to 8-year old age group that are caused by failure to use a booster seat by 25 percent. Conducting the National Survey of the Use of Booster Seats will provide the Department with invaluable information on who is and is not using booster seats, helping the Department better direct its outreach programs to ensure that children are protected to the greatest degree possible when they ride in motor vehicles. The OMB approval for this survey is scheduled to expire on March 31, 2006. NHTSA intends to seek an extension to this approval in order to continue to obtain this important survey data, saving more children and helping to comply with the TREAD Act requirement.

Estimated Annual Burden: 320 hours.

Number of Respondents: Approximately 4, 800 adult motorists will respond to survey questions about the children in their vehicle.

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 estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: November 2005.

Joseph Carra,

Associate Administrator for the National Center for Statistics and Analysis, NHTSA.

[FR Doc. E5–6719 Filed 11–30–05; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Thursday,
December 1, 2005

Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR 60–250

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AB24

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (2001) (''Section 4212'' or ''VEVRAA''). This rule makes three general revisions to the VEVRAA regulations. First, it generally conforms the VEVRAA regulations to the Veterans Employment Opportunities Act of 1998 (VEOA) and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA). Second, it removes references to letters of commitment because the violations formerly incorporated into the letter of commitment are now summarized in the Compliance Evaluation Closure Letter. Third, it removes language about the effective date of the rule published in 1998 because that language is obsolete.

EFFECTIVE DATE: These regulations are effective January 3, 2006.

FOR FURTHER INFORMATION CONTACT: James C. Pierce, Acting Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

Background

Prior to recent amendments, the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (''Section 4212'' or ''VEVRAA'') required parties holding Government contracts or subcontracts of $10,000 or more to ''take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.'' The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has published regulations implementing VEVRAA at 41 CFR part 60–250.

This final rule revises the OFCCP regulations to conform to the requirements of the Veterans Employment Opportunities Act of 1998 (VEOA) and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA). Today's rule does not incorporate changes made to VEVRAA by the Jobs for Veterans Act (JVA) that was signed by the President on November 7, 2002. JVA amended the VEVRAA requirements applicable to Federal contracts and subcontracts entered on or after December 1, 2003, by raising the contract amount threshold for VEVRAA coverage, modifying the categories of protected veterans, and making changes to job listing requirements. At a later date, OFCCP will issue regulations implementing the JVA changes that will apply to contracts entered on or after December 1, 2003.

Except as set forth below, the contents of part 60–250 remain unchanged from the rule being amended. VEOA amended section 4212(a) in two ways. First, section 7 of VEOA raised the amount of a contract required to establish VEVRAA coverage from $10,000 to $25,000. Second, section 7 of VEOA granted VEVRAA protection to a new group of veterans, called ''other protected veterans''—those who have served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

VBHCIA amended VEVRAA by creating a new class of protected veteran, called ''recently separated veteran.'' Recently separated veteran is defined in VEVRAA as ''any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.'' However, the term ''recently separated veteran'' is also defined in the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*) (WIA) as ''any veteran who applies for participation under this chapter within 48 months after the discharge or release from active military, naval, or air service.'' The WIA is administered by the Department of Labor's Employment and Training Administration (ETA), which has issued regulations implementing the WIA at 20 CFR part 660–671. Although ETA does not refer to ''recently separated veteran'' in its regulations, ETA uses the WIA definition of ''recently separated veteran.'' To eliminate confusion, ''recently separated veteran'' means, for the purposes of this rule, any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.

Today's rule does not carry forward several outdated provisions of the rule being amended relating to the implementation of that rule after it was published: (1) The effective date of that rule; (2) a statement that the rule did not apply retroactively; and (3) a statement that contractors needed to update their AAPs within 120 days of the rule's effective date (January 4, 1999).

Information about the implementation of today's rule is contained in the preamble, rather than in the rule. Today's rule will become effective 30 days after publication and will apply prospectively. Contractors are required to update their affirmative action programs (AAP) to reflect the requirements of today's rule during their standard 12-month AAP review and updating cycle. A contractor that has prepared an AAP under the old regulations may maintain that AAP for the duration of the AAP year even if that AAP year overlaps with the effective date of the new regulations.

The rule being amended references letters of commitment. OFCCP discontinued the use of the letter of commitment, which was used to resolve minor technical deficiencies, in 1998. OFCCP replaced the letter of commitment with the compliance evaluation closure letter, which is used by OFCCP to close a review where minor or no violations are found. Consequently, references to letters of commitment have been removed from §§ 60–250.62 and 60–250.63.

We discuss specific changes in the Section-by-Section Analysis below.

Section-by-Section Analysis

The following analysis focuses on a comparison of today's rule with the rule being amended found at 41 CFR part 60–250. The analysis discusses VEOA and VBHCIA where necessary to place today's rule in context. Sections with no changes are not discussed.

Part 60–250

OFCCP is amending the Part heading by adding ''Recently Separated Veterans'' and ''Other Protected Veterans'' to include veterans protected under VEOA and VBHCIA. In the table of contents, the heading for §§ 250.62 and 250.63 are updated to correspond to the headings in the regulatory text and the table of contents reference for § 250.85 is deleted (see discussion of those sections below).

OFCCP is amending the United States Code authority citation to denote that the VEVRAA statutory authority being referenced is a pre-JVA amendment. As discussed above, JVA amendments to VEVRAA apply only to contracts entered on or after December 1, 2003. Because this regulation draws its authority from the VEVRAA as enacted

before its amendment by the JVA, the date in the citation has been added.

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–250.1 Purpose, Applicability and Construction

This section amends paragraphs (a) and (c)(2) by adding ''recently separated veterans'' and ''other protected veterans'' to include veterans protected under VEOA and VBHCIA. Additionally, paragraph (b) is amended to state that a Government contract or subcontract of at least $25,000 is covered by the Act.

Section 60–250.2 Definitions

This section amends paragraphs (j), (k), and (m) (the definitions for the terms ''contractor,'' ''prime contractor,'' and ''subcontractor,'' respectively) to increase the coverage threshold amount from $10,000 to $25,000 to conform to the requirements of the VEOA. Paragraph (q) adds the definition of ''other protected veteran,'' the new class of veterans protected by VEOA. Paragraph (r) adds the definition of ''recently separated veteran,'' the new class of veterans protected under VBHCIA. With the addition of paragraphs (q) and (r), we redesignate paragraphs (q) through (u) as paragraphs (s) through (w), respectively.

Section 60–250.4 Coverage and Waivers

This section amends paragraphs (a)(1) and (a)(2) to increase the contract or subcontract threshold amount from $10,000 to $25,000 to conform to the requirements of the VEOA.

Section 60–250.5 Equal Opportunity Clause

This section adds ''recently separated veteran(s)'' and ''other protected veteran(s)'' to paragraphs (a), (a)(1), (a)(9), and (a)(10) to include veterans protected under VEOA and VBHCIA. Paragraph (a)(11) raises the subcontract or purchase order threshold amount from $10,000 to $25,000 to conform to the requirements of the VEOA.

Subpart B—Discrimination Prohibited

Section 60–250.21 Prohibitions

This section adds ''recently separated veteran(s)'' and ''other protected veteran(s)'' to paragraphs (a), (b), (c), (d)(1), (e), (g)(1), and (i) to include veterans protected under VEOA and VBHCIA.

Section 60–250.22 Direct Threat Defense

This section replaces the reference to § 60–250.2(u) with § 60–250.2(w) to conform to the redesignating in § 60–250.2.

Subpart C—Affirmative Action Program

Section 60–250.42 Invitation To Self-Identify

This section adds ''recently separated veteran(s)'' and ''other protected veteran(s)'' to paragraphs (b) and (f) to include veterans protected under VEOA and VBHCIA.

Section 60–250.43 Affirmative Action Policy

This section adds ''recently separated veteran(s)'' and ''other protected veteran(s)'' to include veterans protected under VEOA and VBHCIA.

Section 60–250.44 Required Contents of Affirmative Action Programs

This section adds ''recently separated veteran(s)'' and ''other protected veteran(s)'' to paragraphs (a), (a)(2), (a)(3), (b), (e), (f), (f)(1), (f)(3), (f)(4), (f)(5), (f)(7), (f)(8), (g)(1), (g)(2)(ii), (g)(2)(vii), and (h)(1)(iv) to include veterans protected under VEOA and VBHCIA.

Subpart D—General Enforcement and Complaint Procedures

Section 60–250.60 Compliance Evaluations

This section adds ''recently separated veteran'' and ''other protected veteran'' to paragraph (a) to include veterans protected under VEOA and VBHCIA.

The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) has been renamed the Veterans' Employment and Training Service (VETS). The rule is updated with the agency's current name.

Section 60–250.61 Complaint Procedures

This section adds ''recently separated veteran'' and ''other protected veteran'' to paragraph (b)(iii) to include veterans protected under VEOA and VBHCIA.

Section 60–250.62 Conciliation Agreements

This section deletes paragraph (b), which referred to letters of commitment. In 1998 OFCCP discontinued the use of the letter of commitment, which was used to resolve minor technical deficiencies. Discontinuing the use of the Letter of Commitment, OFCCP Order Number ADM Notice/Other, Transmittal Number 226 (August 5, 1998). The letter of commitment was replaced with the compliance evaluation closure letter, which is used by OFCCP to close a compliance evaluation when minor or no violations are found. Consequently, the reference in § 60–250.62(b) to the letter of commitment is no longer necessary. The heading for § 250.62 also deletes the reference to the letter of commitment.

Section 60–250.63 Violation of Conciliation Agreements

We have deleted paragraph (d) because it references the letter of commitment. As discussed above, OFCCP no longer uses the letter of commitment. Additionally, the heading to § 250.63 deletes the reference to the letter of commitment.

Section 60–250.65 Enforcement Proceedings

This rule adds a citation to the pre-JVA amendment to VEVRAA in paragraph 60–250.65(b)(3). Paragraph (b)(3) states that references in 41 CFR part 60–30 to Executive Order 11246 shall mean the ''Vietnam Era Veterans' Readjustment Assistance Act, as amended,'' for purposes of hearings held pursuant to part 60–250. This citation is added because the ''Vietnam Era Veterans' Readjustment Assistance Act, as amended,'' references all amendments to VEVRAA, including amendments by JVA. As stated above, this rule does not incorporate amendments to VEVRAA made by JVA. Accordingly, a U.S.C. citation, 38 U.S.C. 4212 (2001), is added to clarify that the reference is to the pre-JVA amendment to VEVRAA.

Section 60–250.69 Intimidation and Interference

This section adds ''recently separated veterans'' and ''other protected veterans'' to paragraphs (a)(2) and (a)(3) to include veterans protected under VEOA and VBHCIA.

Subpart E—Ancillary Matters

Section 60–250.80 Recordkeeping

This rule removes paragraph (c) from § 60–250.80. Paragraph (c) states that the recordkeeping requirements of § 60–250.80 apply only to records made or kept on or after the date that the Office of Management and Budget has cleared the requirements. This paragraph's discussion of the effective date for this section is unnecessary because the date referenced the new recordkeeping requirement contained in the rule published in 1998.

Section 60–250.84 Responsibilities of Local Employment Service Offices

This section adds ''recently separated veterans'' and ''other protected veterans'' to paragraph (a) to include veterans protected under VEOA and VBHCIA.

Section 60–250.85 Effective Date

This rule removes § 60–250.85. This section's discussion of effective dates for the rule being amended is unnecessary, as OFCCP no longer includes effective dates in the regulations.

Appendix A to Part 60–250—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

This appendix amends paragraphs 5 and 8 to replace the reference to § 60–250.2(r) with § 60–250.2(t) to conform to the redesignating in § 60–250.2. We also update the phone numbers for the EEOC and add a second toll free number for the Job Accommodation Network (JAN) in paragraph 6. Lastly, we update this appendix with the information that JAN is now operated by the Office of Disability Employment Policy, in the Department of Labor.

Appendix B to Part 60–250—Sample Invitation To Self-Identify

Appendix B adds ''recently separated veteran(s)'' and ''other protected veteran(s)'' to paragraphs 1, 2, and 7 to include veterans protected under VEOA and VBHCIA. In addition, in paragraph 2 we place the definitions of ''recently separated veteran'' and ''other protected veteran'' after the definition of veteran of the Vietnam era.

Appendix C to Part 60–250—Review of Personnel Processes

Appendix C adds ''recently separated veteran'' and ''other protected veteran'' to paragraphs 1, 2, and 3 to include veterans protected under VEOA and VBHCIA.

Regulatory Procedures

Publication in Final

The Department of Labor has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act, 5 U.S.C. 553. The three substantive revisions in the rule are nondiscretionary ministerial actions that merely incorporate, without change, statutory amendments into preexisting regulations:

(1) The increase in the contract threshold amount from $10,000 to $25,000;

(2) The addition of the group of veterans protected under VEOA; and

(3) The addition of the group of veterans protected under VBHCIA. Because these changes are required by statute, there is good cause for OFCCP to find that the notice and public comment procedure is unnecessary pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

This rule removes five outdated regulatory references. First, the Department is amending its statutory authority citation to reference VEVRAA as it stood before amendment by JVA, because this regulation will not apply to contracts and subcontracts covered by VEVRAA as amended by JVA. Second, the Department is deleting paragraph (c) in § 60–250.80. This paragraph's discussion of the effective date of the recordkeeping requirements of § 60–250 is unnecessary because the date in the regulation referenced new recordkeeping requirements contained in the rule published in 1998. Third, the Department is deleting § 60–250.85. This section's discussion of effective dates for the rule being amended is unnecessary because the dates referenced in this section applied to the rule published in 1998. Additionally, information on effective dates in DOL regulations is now contained in a rule's preamble. Fourth, the Department has replaced reference to the ''President's Committee on Employment of People with Disabilities'' with ''Office of Disability Employment Policy, Labor'' to account for the transition of duties between the two groups. These changes are merely housekeeping amendments that will not have an effect on regulated entities. Consequently, there is good cause for OFCCP to find that the notice and public comment procedure is unnecessary pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

Finally, this rule removes reference to the letter of commitment. OFCCP discontinued the use of the letter of commitment in 1998. In the past, a letter of commitment was used to resolve minor technical deficiencies identified by OFCCP during a compliance review of a Federal contractor or subcontractor. Because this is a change of agency procedure or practice, notice and public comment are not required under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A).

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule is not significant for purposes of Executive Order 12866 and therefore need not be reviewed by the Office of Management and Budget.

The Department bases its conclusion on the fact that this final rule does not substantively change the existing obligation of Federal contractors to apply a policy of nondiscrimination and affirmative action in their employment of protected veterans. For example, although the categories of protected veterans are expanded pursuant to statutory changes, the substance of the nondiscrimination and affirmative action obligations to be afforded protected veterans remains the same.

Executive Order 13132

OFCCP has reviewed the rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Regulatory Flexibility Act

The rule clarifies existing requirements for Federal contractors. In view of this fact and because the rule does not substantively change existing obligations for Federal contractors, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Reform

Executive Order 12875—This rule does not create an unfunded Federal mandate upon any State, local, or tribal government.

Unfunded Mandates Reform Act of 1995—This does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

The information collection requirements contained in the existing VEVRAA regulations, with the exception of those related to complaint procedures, are currently approved under OMB Control No. 1215–0072 (Recordkeeping and Reporting Requirements-Supply and Service) and OMB Control No. 1215–0163 (Construction Recordkeeping and Reporting). The information collection requirements contained in the existing complaint procedures regulation are currently approved under OMB Control

No. 1215–0131. This final rule amends the regulations implementing VEVRAA to incorporate the changes to the contract coverage threshold and the categories of covered veterans made by VEOA and VBHCIA. The increase in the contract coverage threshold from $10,000 to $25,000 may result in a decrease in the number of respondents and burden hours. However, this final rule does not make any changes to the currently approved information collections. Consequently, this final rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, and Veterans.

Signed at Washington, DC, this 22nd day of November, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

■ Accordingly, under authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 60, Part 60–250, is revised to read as follows:

PART 60–250—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, RECENTLY SEPARATED VETERANS, AND OTHER PROTECTED VETERANS

Subpart A—Preliminary Matters, Equal Opportunity Clause

Sec.

Subpart B—Discrimination Prohibited

Subpart C—Affirmative Action Program

Subpart D—General Enforcement and Complaint Procedures

Subpart E—Ancillary Matters

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 (2001) (amended 2002); 38 U.S.C. 4212 (2001) (amended 2002) and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–250.1 Purpose, applicability and construction.

(a) *Purpose.* The purpose of the regulations in this part is to set forth the standards for compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212, or VEVRAA), which requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.

(b) *Applicability.* This part applies to all Government contracts and subcontracts of $25,000 or more, for the purchase, sale or use of personal property or nonpersonal services (including construction): *Provided,* That subpart C of this part applies only as described in § 60–250.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part.

(c) *Construction*—(1) *In general.* The Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) set out as an appendix to 29 CFR part 1630 issued pursuant to Title I may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any state or political subdivision that provides greater or equal protection for the rights of special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

§ 60–250.2 Definitions.

For the purpose of this part:

(a) *Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (2001).

(b) *Equal opportunity clause* means the contract provisions set forth in § 60–250.5, ''Equal opportunity clause.''

(c) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(d) *Deputy Assistant Secretary* means the Deputy Assistant Secretary for Federal Contract Compliance of the United States Department of Labor, or his or her designee.

(e) *Government* means the Government of the United States of America.

(f) *United States*, as used in this part, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

(g) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(h) *Contract* means any Government contract or subcontract.

(i) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term ''*Government contract*'' does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(1) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Person*, as used in this paragraph (i) and paragraph (l) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(4) *Nonpersonal services*, as used in this paragraph (i) and paragraph (l) of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Construction*, as used in this paragraph (i) and paragraph (l) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(6) *Personal property*, as used in this paragraph (i) and paragraph (l) of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(j) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract of $25,000 or more.

(k) *Prime contractor* means any person holding a contract of $25,000 or more, and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' includes any person who has held a contract subject to the Act.

(l) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(m) S*ubcontractor* means any person holding a subcontract of $25,000 or more and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' any person who has held a subcontract subject to the Act.

(n)(1) *Special disabled veteran* means:

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(2) *Serious employment handicap*, as used in paragraph (n)(1) of this section, means a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes and interests.

(o) *Qualified special disabled veteran* means a special disabled veteran who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

(p) *Veteran of the Vietnam era* means a person who:

(1) Served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred:

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed:

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(q) *Other protected veteran* means a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under laws administered by the Department of Defense.

(r) *Recently separated veteran* means any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.

(s) *Essential functions*—(1) *In general.* The term *essential functions* means fundamental job duties of the employment position the special disabled veteran holds or desires. The term *essential functions* does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(t) *Reasonable accommodation*—(1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is a special disabled veteran to be considered for the position such applicant desires;[1]

[1] A contractor's duty to provide a reasonable accommodation with respect to applicants who are special disabled veterans is not limited to those who ultimately demonstrate that they are qualified

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified special disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee who is a special disabled veteran to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees who are not special disabled veterans.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by special disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for special disabled veterans.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified special disabled veteran in need of the accommodation.[2] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(u) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (u)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(v) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(w) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that a special disabled veteran poses a *direct threat* shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

§ 60–250.3 [Reserved]

§ 60–250.4 Coverage and waivers.

(a) *General*—(1) *Contracts and subcontracts of $25,000 or more.* Contracts and subcontracts of $25,000 or more, are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, ''call-type'' contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $25,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order is $25,000 or more. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term ''employment activities within the United States'' includes actual employment within the United States, and decisions of the contractor made within the United States pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with state or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Deputy Assistant Secretary may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so

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to perform the job in issue. Special disabled veteran applicants must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (*e.g.*, if they present themselves at the correct location and time to fill out an application).

[2] Contractors must engage in such an interactive process with a special disabled veteran, whether or not a reasonable accommodation ultimately is identified that will make the person a qualified individual. Contractors must engage in the interactive process because, until they have done so, they may be unable to determine whether a reasonable accommodation exists that will result in the person being qualified.

require. The Deputy Assistant Secretary may also grant such waivers to groups or categories of contracts: Where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the Act. When a waiver has been granted for any class of contracts, the Deputy Assistant Secretary may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Deputy Assistant Secretary in writing within 30 days.

(3) *Facilities not connected with contracts.* The Deputy Assistant Secretary may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

§ 60–250.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, Recently Separated Veterans, and Other Protected Veterans.

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures;

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. Rates of pay or any other form of compensation and changes in compensation;

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. Leaves of absence, sick leave, or any other leave;

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;

vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. Activities sponsored by the contractor including social or recreational programs; and

ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

3. Listing of employment openings with the local employment service office pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever the contractor becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state: *Provided,* That this requirement shall not apply to state and local governmental contractors. As long as the contractor is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent contracts. The contractor may advise the state agency when it is no longer bound by this contract clause.

5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

6. As used in this clause: i. *All employment openings* includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. *Executive and top management* means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6. ii.; *Provided*, that (e) of this paragraph 6.ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.

iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established ''recall'' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this

clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans. The contractor must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (*e.g.*, the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and is committed to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.

11. The contractor will include the provisions of this clause in every subcontract or purchase order of $25,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance may direct to enforce such provisions, including action for noncompliance.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It is not necessary that the equal opportunity clause be quoted verbatim in the contract. The clause may be made a part of the contract by citation to 41 CFR 60–250.5(a).

(e) *Incorporation by operation of the Act.* By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Deputy Assistant Secretary and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Deputy Assistant Secretary with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Deputy Assistant Secretary, and taking such actions for noncompliance as are set forth in § 60–250.66 as may be ordered by the Secretary or the Deputy Assistant Secretary.

Subpart B—Discrimination Prohibited

§ 60–250.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–250.21 Prohibitions.

The term ''discrimination'' includes, but is not limited to, the acts described in this section and § 60–250.23.

(a) *Disparate treatment.* It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual because of that individual's status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran.

(b) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of that individual's status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran. For example, the contractor may not segregate qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements.* (1) *In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee who is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase ''contractual or other arrangement or relationship'' includes, but is not limited to, a relationship with: an employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of status as a special disabled veteran, veteran of the Vietnam

era, recently separated veteran, or other protected veteran; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known special disabled veteran, Vietnam era veteran, recently separated veteran, or other protected veteran status of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is a special disabled veteran, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee who is a special disabled veteran based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified special disabled veteran is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified special disabled veteran.

(g) *Qualification standards, tests and other selection criteria*

(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out individuals on the basis of their status as special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans, unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a special disabled veteran if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude individuals on the basis of their status as special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant who is a special disabled veteran because the applicant's disability prevents him or her from performing marginal functions. When considering a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran for an employment opportunity, the contractor may not rely on portions of such veteran's military record, including his or her discharge papers, which are not relevant to the qualification requirements of the opportunity in issue.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to 38 U.S.C. 4212 and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who is a special disabled veteran with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related and/or military-service-related pension or other disability-related and/or military-service-related benefit the applicant or employee receives from another source.

§ 60–250.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60–250.2(w) defining *direct threat.*)

§ 60–250.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is a special disabled veteran or as to the nature or severity of such a veteran's disability.

(b) *Permitted medical examinations and inquiries.* (1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of their status as a special disabled veteran.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees who are special disabled veterans as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and

consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite applicants to self-identify as being covered by the Act, as specified in § 60–250.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–250.24 Drugs and alcohol.

(a) *Specific activities permitted.* The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing.* (1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of § 60–250.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–250.23(b)(5) and (c).

§ 60–250.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The contractor may not deny a qualified special disabled veteran equal access to insurance or subject a qualified special disabled veteran to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–250.40 Applicability of the affirmative action program requirement.

(a) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $50,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually.

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–250.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–250.42 Invitation to self-identify.

(a) *Special disabled veterans.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a special disabled veteran who may be covered by the Act and wishes to benefit under the affirmative action program. Such invitation shall be extended after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, except that the contractor may invite

special disabled veterans to self-identify prior to making a job offer when:

(1) The invitation is made when the contractor actually is undertaking affirmative action for special disabled veterans at the pre-offer stage; or

(2) The invitation is made pursuant to a Federal, State or local law requiring affirmative action for special disabled veterans.

(b) *Veterans of the Vietnam era, recently separated veterans and other protected veterans.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a veteran of the Vietnam era, recently separated veteran or other protected veteran who may be covered by the Act and wishes to benefit under the affirmative action program. Such invitation may be made at any time before the applicant begins his or her employment duties.

(c) The invitations referenced in paragraphs (a) and (b) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitations also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitations shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. (An acceptable form for such an invitation is set forth in Appendix B of this part. Because a contractor usually may not seek advice from a special disabled veteran regarding placement and accommodation until after a job offer has been extended, the invitation set forth in Appendix B of this part contains instructions regarding modifications to be made if it is used at the pre-offer stage.)

(d) If an applicant so identifies himself or herself as a special disabled veteran, the contractor should also seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer has been extended. The contractor also may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, (*e.g.*, in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file in accordance with § 60–250.23(d) on persons who have self-identified as special disabled veterans.

(e) The contractor shall keep all information on self identification confidential. The contractor shall provide the information to OFCCP upon request. This information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor to be special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans.

(g) Nothing in this section shall relieve the contractor from liability for discrimination under the Act.

§ 60–250.43 Affirmative action policy.

Under the affirmative action obligations imposed by the Act contractors shall not discriminate because of status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran and shall take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–250.20.

§ 60–250.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees who are special disabled veterans are informed of the contents of the policy statement (for example, the contractor may have the statement read to a visually disabled individual, or may lower the posted notice so that it may be read by a person in a wheelchair). The policy statement should indicate the chief executive officer's attitude on the subject matter, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy should state, among other things, that the contractor will: Recruit, hire, train and promote persons in all job titles, and ensure that all other personnel actions are administered, without regard to special disabled veteran, Vietnam era veteran, recently separated veteran, or other protected veteran status; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA) or any other Federal, state or local law requiring equal opportunity for special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans;

(3) Opposing any act or practice made unlawful by VEVRAA or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans; or

(4) Exercising any other right protected by VEVRAA or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran is considered for employment opportunities, the contractor relies only on that portion of the individual's military record, including his or her discharge papers, that is relevant to the requirements of the opportunity in issue. The contractor shall ensure that its personnel processes do not stereotype special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans in a manner which limits their access to all jobs for which they are qualified. The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new

processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. (Appendix C of this part is an example of an appropriate set of procedures. The procedures in Appendix C of this part are not required and contractors may develop other procedures appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified special disabled veterans, they are job-related for the position in question and are consistent with business necessity.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified special disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See § 60–250.2(w) defining direct threat.)

(d) *Reasonable accommodation to physical and mental limitations.* As is provided in § 60–250.21(f), as a matter of nondiscrimination the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified special disabled veteran unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee who is known to be a special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran.

(f) *External dissemination of policy, outreach and positive recruitment.* The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraphs (f)(1) through (f)(8) of this section that are reasonably designed to effectively recruit qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraphs (f)(1) through (f)(8) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(1) The contractor should enlist the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for, qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans, to fulfill its commitment to provide meaningful employment opportunities to such veterans:

(i) The Local Veterans' Employment Representative or his or her designee in the local employment service office nearest the contractor's establishment;

(ii) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;

(iii) The veterans' counselors and coordinators (''Vet-Reps'') on college campuses;

(iv) The service officers of the national veterans' groups active in the area of the contractor's establishment; and

(v) Local veterans' groups and veterans' service centers near the contractor's establishment.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(3) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans. An effort should be made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating disabled veterans.

(4) The contractor should establish meaningful contacts with appropriate veterans' service organizations which serve special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans for such purposes as advice, technical assistance, and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(5) Special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(6) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(7) The contractor should take positive steps to attract qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for Vietnam era veterans, veterans with disabilities, recently separated veterans, and other protected veterans.

(8) The contractor, in making hiring decisions, should consider applicants who are known special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans for all available positions for which they may be

qualified when the position(s) applied for is unavailable.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop internal procedures such as those listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (g)(2) of this section or that its activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate.

(2) The contractor should implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual;

(ii) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans. The contractor should periodically schedule special meetings with all employees to discuss policy and explain individual employee responsibilities;

(iii) Publicize it in the company newspaper, magazine, annual report and other media;

(iv) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude;

(v) Discuss the policy thoroughly in both employee orientation and management training programs;

(vi) Meet with union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation;

(vii) Include articles on accomplishments of special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans in company publications; and

(viii) When employees are featured in employee handbooks or similar publications for employees, include special disabled veterans.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans have had the opportunity to participate in all company sponsored educational, training, recreational and social activities; and

(v) Measure the contractor's compliance with the affirmative action program's specific obligations.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary top management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

Subpart D—General Enforcement and Complaint Procedures

§ 60–250.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of the Executive Order and regulations;

(3) *Compliance check.* A determination of whether the contractor has maintained records consistent with § 60–250.80; at the contractor's option

the documents may be provided either on-site or off-site; or

(4) *Focused review.* An on-site review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–250.62.

(c) *VETS–100 Report.* During a compliance evaluation, OFCCP may verify whether the contractor has complied with its obligation, pursuant to 41 CFR part 61–250, to file its annual Veterans' Employment Report (VETS–100 Report) with the Veterans' Employment and Training Service (VETS). If the contractor has not filed its report, OFCCP will request a copy from the contractor. If the contractor fails to provide a copy of the report to OFCCP, OFCCP will notify VETS.

§ 60–250.61 Complaint procedures.

(a) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint alleging a violation of the Act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown. Complaints may be submitted to the OFCCP, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office. Complaints may also be submitted to the Veterans' Employment and Training Service of the Department of Labor directly, or through the Local Veterans' Employment Representative (LVER) or his or her designee at the local employment service office. Such parties will assist veterans in preparing complaints, promptly refer such complaints to OFCCP, and maintain a record of all complaints which they receive and forward. OFCCP shall inform the party forwarding the complaint of the progress and results of its complaint investigation. The state employment security agency shall cooperate with the Deputy Assistant Secretary in the investigation of any complaint.

(b) *Contents of complaints.* (1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) Documentation showing that the individual is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran. Such documentation must include a copy of the veteran's form DD–214, and, where applicable, a copy of the veteran's Benefits Award Letter, or similar Department of Veterans Affairs certification, updated within one year prior to the date the complaint is filed, indicating the veteran's level (by percentage) of disability, and whether the veteran has been determined by the Department of Veterans Affairs to have a serious employment handicap under 38 U.S.C. 3106;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (b)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(c) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(e) *Resolution of matters.* (1) If the complaint investigation finds no violation of the Act or this part, or if the Deputy Assistant Secretary decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–250.65(a)(1), the complainant and contractor shall be so notified. The Deputy Assistant Secretary, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Deputy Assistant Secretary will review all determinations of no violation that involve complaints that are not also cognizable under Title I of the Americans with Disabilities Act.

(3) In cases where the Deputy Assistant Secretary decides to reconsider the determination of a Notification of Results of Investigation, the Deputy Assistant Secretary shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the Act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–250.62.

§ 60–250.62 Conciliation agreements.

If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

§ 60–250.63 Violation of conciliation agreements.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to

respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

§ 60–250.64 Show cause notices.

When the Deputy Assistant Secretary has reasonable cause to believe that the contractor has violated the Act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see § 60–250.65).

§ 60–250.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Deputy Assistant Secretary may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–250.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: Provided, That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights, Regional Solicitors and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60–30 to ''Executive Order 11246'' shall mean the Vietnam Era Veterans'' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212 (2001)); to ''equal opportunity clause'' shall mean the equal opportunity clause published at § 60–250.5; and to ''regulations'' shall mean the regulations contained in this part.

§ 60–250.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Deputy Assistant Secretary, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60–250.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–250.67 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–250.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Deputy Assistant Secretary also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Deputy Assistant Secretary's decision. The petition shall be served on the Deputy Assistant Secretary and the Associate Solicitor for Civil Rights and shall include the decision as an appendix. The Deputy Assistant Secretary may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional

orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–250.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against, any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans, or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Deputy Assistant Secretary against any contractor who violates this obligation.

§ 60–250.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–250.80 Recordkeeping

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term *personnel records relevant to the complaint, compliance evaluation or action* would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the Act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided*, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

§ 60–250.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the Act or this part. Information obtained in this manner shall be used only in connection with the administration of the Act and in furtherance of the purposes of the Act.

§ 60–250.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, the Department of Veterans Affairs, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the Act.

§ 60–250.83 Rulings and interpretations.

Rulings under or interpretations of the Act and this part shall be made by the Deputy Assistant Secretary.

§ 60–250.84 Responsibilities of local employment service offices.

(a) Local employment service offices shall refer qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans to fill employment openings listed by contractors with such local offices pursuant to the mandatory listing requirements of the equal opportunity clause, and shall give priority to special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans in making such referrals.

(b) Local employment service offices shall contact employers to solicit the job orders described in paragraph (a) of this section. The state employment security agency shall provide OFCCP upon request information pertinent to

whether the contractor is in compliance with the mandatory listing requirements of the equal opportunity clause.

Appendix A to Part 60–250—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent ''free-standing'' source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See § 60–250.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under VEVRAA, like reasonable accommodation required under section 503 and the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to VEVRAA and section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of a special disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an ''otherwise qualified'' special disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–250.2(o), a special disabled veteran is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the special disabled veteran is qualified with respect to that process. One is ''otherwise qualified'' if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be special disabled veterans. As stated in § 60–250.42 (see also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they are placed on the contractor's payroll, to indicate whether they are covered by the Act and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor should seek the advice of special disabled veterans who ''self-identify'' in this way as to proper placement and appropriate accommodation. Moreover, § 60–250.44(d) provides that if an employee who is a known special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a special disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee who is a special disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the ''best'' accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees who are special disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are special disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term ''undue hardship'' refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, *e.g.,* the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the special disabled veteran should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. Section 60–250.2(t) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the special disabled veteran in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–4000 (voice), 1–800–669–6820 (TTY)), the Job Accommodation Network (JAN) operated by the Office of Disability Employment Policy in the U.S. Department of Labor (1–800-JAN–7234 or 1–800–232–9675), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a special disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and braille or large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by special disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit

unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–250.2(t) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified special disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a special disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, *i.e.*, those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind special disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the special disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit special disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or special disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the special disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known special disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are special disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A ''reasonable amount of time'' should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned special disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not special disabled veterans. It should also be noted that the contractor is not required to promote a special disabled veteran as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to special disabled veterans who are vision or hearing impaired, *e.g.*, by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, *e.g.*, extending regular time deadlines, allowing a special disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a special disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–250—Sample Invitation To Self-Identify

Note: When the invitation to self-identify is being extended to special disabled veterans prior to an offer of employment, as is permitted in limited circumstances under §§ 60–250.42(a)(1) and (2), paragraph 7(ii) of this appendix, relating to identification of reasonable accommodations, should be omitted. This will avoid a conflict with the EEOC's ADA Guidance, which in most cases precludes asking a job applicant (prior to a job offer being made) about potential reasonable accommodations.

[Sample Invitation to Self-Identify]

1. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, which requires Government contractors to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.

2. [The following text should be used when extending an invitation to veterans of the Vietnam era, recently separated veterans, and other protected veterans only.] If you are a veteran of the Vietnam era, recently separated veteran, or other protected veteran, we would like to include you under our affirmative action program. If you would like to be included under the affirmative action program, please tell us. The term ''veteran of the Vietnam era'' refers to a person who served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred in the Republic of Vietnam between February 28, 1961, and May 7, 1975 or between August 5, 1964, and May 7, 1975, in all other cases. The term also refers to a person who was discharged or released from active duty for a service-connected disability if any part of such active duty was performed in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or between August 5, 1964, and May 7, 1975, in all other cases. The term ''recently separated veteran'' refers to any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty. The term ''other protected veteran'' refers to a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under laws administered by the Department of Defense.

[The following text should be used when extending an invitation to special disabled veterans only.] If you are a special disabled veteran, we would like to include you in our affirmative action program. If you would like to be included under the affirmative action program, please tell us. This information will assist us in placing you in an appropriate position and in making accommodations for your disability. The term ''special disabled veteran'' refers to a veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability rated at 30 percent or more, or rated at 10 or 20 percent in the case of a veteran who has been determined by the Department of Veterans Affairs to have a serious employment handicap. The term also refers to a person who was discharged or released from active duty because of a service-connected disability.

[The following text should be used when extending an invitation to veterans of the Vietnam era, special disabled veterans, recently separated veterans, and other protected veterans. If you are a veteran of the Vietnam era, a special disabled veteran, a recently separated veteran, or other protected veteran, we would like to include you under our affirmative action program. If you would like to be included under the affirmative action program, please tell us. [The contractor should include here the definitions of ''veteran of the Vietnam era,'' ''special disabled veteran,'' ''recently separated veteran'' and ''other protected veteran'' found in the two preceding paragraphs.]

3. You may inform us of your desire to benefit under the program at this time and/or at any time in the future.

4. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information provided will be used only in ways that are not inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

5. The information you submit will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of special disabled veterans, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the

extent appropriate, if you have a condition that might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by OFCCP, or enforcing the Americans with Disabilities Act, may be informed.

6. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.]

7. [The following text should be used only when extending an invitation to special disabled veterans, either by themselves or in combination with veterans of the Vietnam era, recently separated veterans, and other protected veterans. Paragraph 7(ii) should be omitted when the invitation to self-identify is being extended prior to an offer of employment.] If you are a special disabled veteran it would assist us if you tell us about (i) any special methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you will be considered for any positions of that kind, and (ii) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations. This information will assist us in placing you in an appropriate position and in making accommodations for your disability.

Appendix C to Part 60–250—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60–250.44(b):

1. The application or personnel form of each known applicant who is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran should include (i) the identification of each promotion for which the covered veteran was considered, and (ii) the identification of each training program for which the covered veteran was considered.

3. In each case where an employee or applicant who is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran is rejected for employment, promotion, or training, the contractor should prepare a statement of the reason as well as a description of the accommodations considered (for a rejected special disabled veteran). The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, should be treated as confidential medical records in accordance with § 60–250.23(d). These materials should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place a special disabled veteran on the job, the contractor should make a record containing a description of the accommodation. The record should be treated as a confidential medical record in accordance with § 60–250.23(d).

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Part III

Department of Housing and Urban Development

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2006; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5031–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of revised contract rent Annual Adjustment Factors.

SUMMARY: This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents for specified programs. These factors apply to housing assistance payment contract anniversaries for calendar months commencing after the date of publication of this notice. The AAFs are based on residential rent and utilities time-series cost indices from the Bureau of Labor Statistics Consumer Price Index (CPI) surveys.

EFFECTIVE DATE: December 1, 2005.

FOR FURTHER INFORMATION CONTACT: David Vargas, Senior Advisor, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, (202) 708–0477 can respond to questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Mark Johnston, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234 for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, (202) 708–3000, for questions relating to all other Section 8 programs. Marie L. Lihn, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0590, is the contact for technical information regarding the development of the factors for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at (800) 877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In addition to being published in the **Federal Register**, this data will be available electronically from the HUD data information page: *http://www.huduser.org/datasets/aaf.html.*

I. Methodology

AAFs are calculated using CPI data on rents and utilities for all metropolitan areas with metropolitan-area specific CPI estimates. AAFs for other areas are calculated using HUD RDD telephone and mail surveys. AAFs are rent change factors. Two types of AAFs are calculated. One type is a gross rent change factor that should be used when the primary utility (normally heating) is included in the rent. The other type is a shelter rent (i.e., rents without utilities) factor that should be used when the primary utility is not included in rent. Decennial census data are used to establish the relationship between gross rents and shelter rents.

CPI Surveys

For specific metropolitan areas where CPI surveys are conducted, changes in the shelter rent and utilities components are calculated based on the most recent CPI annual average change data. In this publication, the rent and utility CPIs for metropolitan areas are based on changes in the index from 2003 to 2004. The ''Highest Cost Utility Included'' column in Schedule C is calculated by weighting the rent and utility change factors using the corresponding components of gross rent in a particular area as calculated in the 2000 Census. The ''Highest Cost Utility Excluded'' column in Schedule C is calculated by eliminating the utility portion of the gross rent change factor.

For areas not covered by a specific metropolitan CPI survey, HUD uses the CPI surveys for the Northeast, South, Midwest, or West region, as appropriate. Rent and utility change factors are calculated from 2003 to 2004. For areas assigned Census Region CPI factors, both metropolitan and non-metropolitan areas received the same factor.

Geographic Areas

The current and former metropolitan areas that use specific CPI factors are listed alphabetically in the tables, according to the metropolitan area where appropriate. Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions for those metropolitan and non-metropolitan areas that are not covered by the local CPI surveys.

The AAFs shown in Schedule C use the same Office of Management and Budget (OMB) metropolitan area definitions, as revised by HUD, that are used in the FY2006 Fair Market Rents.

Area Definitions in Schedule C

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the metropolitan or non-metropolitan counties receive the regional CPI for that Census Region.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated CPI division is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. The regional CPI metropolitan and nonmetropolitan counties of each state are listed after the metropolitan CPI areas (in those states that have such areas). In the six New England states, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the South Region AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

II. Applying AAFs to Various Section 8 Programs

AAFs established by this notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs during the original (i.e., pre-renewal) term of the Housing Assistance Payments (HAP) contract. Three categories of Section 8 programs use the AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-based Certificate (PBC) program.

Each Section 8 program category uses the AAFs differently. The specific HAP contract, program regulation, program requirement, or law determines the application of the AAFs. Restrictions to the use of AAF are discussed below:

Renewal Rents. AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are determined by applying a state-by-state operating cost adjustment factor (OCAF) published by HUD.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) or under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in the tenant-based certificate program. However, this program has been terminated. All tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program. AAFs are still used for adjustment of contract rent for outstanding HAP contracts under the project-based certificate program.

Moderate Rehabilitation Program. Under the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the pre-adjustment contract rent.

III. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices, issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

- The Table 2 AAF is always used. The Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

IV. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is held harmless at 1.0; the corresponding AAF in Table 2 will also be held harmless at 1.0.

V. How To Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent, i.e., where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, i.e., where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.

• Determine whether the highest cost utility is or is not included in contract rent for the contract unit.

• If highest cost utility is included, select the AAF from the column for ''highest cost included''. If highest cost utility is not included, select the AAF from the column for ''utility excluded''.

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Tables.

Dated: November 18, 2005.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

BILLING CODE 4210–62–P

SCHEDULE C - TABLE 1 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Midwest Region	1.029	1.024
Northeast Region	1.042	1.035
South Region	1.022	1.013
West Region	1.033	1.033
Akron, OH MSA	1.028	1.021
Anchorage, AK MSA Metropolitan Area Components: Anchorage, AK HMFA Matanuska-Susitna Borough, AK HMFA	1.018	1.004
Ann Arbor, MI MSA	1.017	1.009
Ashtabula County, OH	1.030	1.020
Atlanta-Sandy Springs-Marietta, GA MSA Metropolitan Area Components: Atlanta-Sandy Springs-Marietta, GA HMFA Butts County, GA HMFA Haralson County, GA HMFA Lamar County, GA HMFA Meriwether County, GA HMFA	1.000	1.000
Atlantic City, NJ MSA	1.046	1.043
Baltimore-Towson, MD MSA Metropolitan Area Components: Baltimore-Towson, MD MSA Columbia city, MD HMFA	1.037	1.035
Boston-Cambridge-Quincy, MA-NH MSA Metropolitan Area Components: Boston-Cambridge-Quincy, MA-NH HMFA Brockton, MA HMFA Lawrence, MA-NH HMFA Lowell, MA HMFA Portsmouth-Rochester, NH HMFA Western Rockingham County, NH HMFA	1.033	1.027
Boulder, CO MSA	1.000	1.000
Bremerton-Silverdale, WA MSA	1.004	1.000

SCHEDULE C - TABLE 1 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Bridgeport-Stamford-Norwalk, CT MSA Metropolitan Area Components: Bridgeport, CT HMFA Danbury, CT HMFA Stamford-Norwalk, CT HMFA	1.045	1.044
Chicago-Naperville-Joliet, IL-IN-WI MSA Metropolitan Area Components: Chicago-Naperville-Joliet, IL HMFA DeKalb County, IL HMFA Gary, IN HMFA Grundy County, IL HMFA Jasper County, IN HMFA Kenosha County, WI HMFA	1.024	1.020
Cincinnati-Middletown, OH-KY-IN MSA Metropolitan Area Components: Brown County, OH HMFA Cincinnati-Middleton, OH-KY-IN HMFA Grant County, KY HMFA	1.010	1.000
Cleveland-Elyria-Mentor, OH MSA	1.028	1.021
Culpeper County, VA	1.037	1.035
Dallas-Fort Worth-Arlington, TX MSA Metropolitan Area Components: Dallas, TX HMFA Fort Worth-Arlington, TX HMFA Wise County, TX HMFA	1.000	1.000
Denver-Aurora, CO MSA	1.000	1.000
Detroit-Warren-Livonia, MI MSA Metropolitan Area Components: Detroit-Warren-Livonia, MI HMFA Livingston County, MI HMFA	1.021	1.007
Flint, MI MSA	1.023	1.006
Greeley, CO MSA	1.005	1.000
Hagerstown-Martinsburg, MD-WV MSA	1.037	1.035
Henderson County, TX	1.000	1.000
STATE: HAWAII	1.036	1.035

SCHEDULE C - TABLE 1 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Hood County, TX	1.000	1.000
Houston-Baytown-Sugar Land, TX MSA Metropolitan Area Components: Austin County, TX HMFA Brazoria County, TX HMFA Houston-Baytown-Sugar Land, TX HMFA	1.019	1.008
Island County, WA	1.005	1.000
Kankakee-Bradley, IL MSA	1.024	1.019
Kansas City, MO-KS MSA Metropolitan Area Components: Bates County, MO HMFA Franklin County, KS HMFA Kansas City, MO-KS HMFA	1.022	1.014
King George County, VA	1.037	1.035
Lenawee County, MI	1.022	1.007
Los Angeles-Long Beach-Santa Ana, CA MSA Metropolitan Area Components: Los Angeles-Long Beach, CA HMFA Orange County, CA HMFA	1.058	1.065
Manchester-Nashua, NH MSA Metropolitan Area Components: Hillsborough County, NH (part) HMFA Manchester, NH HMFA Nashua, NH HMFA	1.034	1.026
Miami-Fort Lauderdale-Miami Beach, FL MSA	1.056	1.058
Milwaukee-Waukesha-West Allis, WI MSA	1.020	1.017
Minneapolis-St. Paul-Bloomington, MN-WI MSA	1.015	1.007
Monroe, MI MSA	1.022	1.007
Napa, CA MSA	1.000	1.000
New Haven-Milford, CT MSA Metropolitan Area Components: Milford-Ansonia-Seymour, CT HMFA New Haven-Meriden, CT HMFA Waterbury, CT HMFA	1.046	1.044

SCHEDULE C - TABLE 1 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA Metropolitan Area Components: Bergen-Passaic, NJ HMFA Jersey City, NJ HMFA Middlesex-Somerset-Hunterdon, NJ HMFA Nassau-Suffolk, NY HMFA New York-Monmouth-Ocean, NY-NJ HMFA Newark, NJ HMFA Pike County, PA HMFA	1.045	1.044
Ocean City, NJ MSA	1.047	1.043
Olympia, WA MSA	1.003	1.000
Oxnard-Thousand Oaks-Ventura, CA MSA	1.058	1.065
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	1.046	1.043
Phoenix-Mesa-Scottsdale, AZ MSA	1.009	1.006
Pittsburgh, PA MSA Metropolitan Area Components: Armstrong County, PA HMFA Pittsburgh, PA HMFA	1.033	1.026
Portland-Vancouver-Beaverton, OR-WA MSA	1.009	1.004
Poughkeepsie-Newburgh-Middletown, NY MSA	1.046	1.044
Racine, WI MSA	1.021	1.017
Riverside-San Bernardino-Ontario, CA MSA	1.052	1.065
Salem, OR MSA	1.010	1.004
San Diego-Carlsbad-San Marcos, CA MSA	1.050	1.054
San Francisco-Oakland-Fremont, CA MSA Metropolitan Area Components: Oakland-Fremont, CA HMFA San Francisco, CA HMFA	1.000	1.000
San Jose-Sunnyvale-Santa Clara, CA MSA Metropolitan Area Components: San Benito County, CA HMFA San Jose-Sunnyvale-Santa Clara, CA HMFA	1.000	1.000

SCHEDULE C - TABLE 1 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Santa Cruz-Watsonville, CA MSA	1.000	1.000
Santa Rosa-Petaluma, CA MSA	1.000	1.000
Seattle-Tacoma-Bellevue, WA MSA Metropolitan Area Components: Seattle-Bellevue, WA HMFA Tacoma, WA HMFA	1.002	1.000
St. Louis, MO-IL MSA Metropolitan Area Components: Bond County, IL HMFA Macoupin County, IL HMFA St. Louis, MO-IL HMFA Washington County, MO HMFA	1.035	1.031
Tampa-St. Petersburg-Clearwater, FL MSA	1.041	1.023
Trenton-Ewing, NJ MSA	1.046	1.044
Vallejo-Fairfield, CA MSA	1.000	1.000
Vineland-Millville-Bridgeton, NJ MSA	1.047	1.043
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA Metropolitan Area Components: Jefferson County, WV HMFA Warren County, VA HMFA Washington-Arlington-Alexandria, DC-VA-MD HMFA	1.036	1.035
Westchester County, NY	1.045	1.044
Worcester, MA MSA Metropolitan Area Components: Eastern Worcester County, MA HMFA Fitchburg-Leominster, MA HMFA Western Worcester County, MA HMFA Worcester, MA HMFA	1.035	1.026

SCHEDULE C - TABLE 2 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Midwest Region	1.019	1.014
Northeast Region	1.032	1.025
South Region	1.012	1.003
West Region	1.023	1.023
Akron, OH MSA	1.018	1.011
Anchorage, AK MSA Metropolitan Area Components: Anchorage, AK HMFA Matanuska-Susitna Borough, AK HMFA	1.008	1.000
Ann Arbor, MI MSA	1.007	1.000
Ashtabula County, OH	1.020	1.010
Atlanta-Sandy Springs-Marietta, GA MSA Metropolitan Area Components: Atlanta-Sandy Springs-Marietta, GA HMFA Butts County, GA HMFA Haralson County, GA HMFA Lamar County, GA HMFA Meriwether County, GA HMFA	1.000	1.000
Atlantic City, NJ MSA	1.036	1.033
Baltimore-Towson, MD MSA Metropolitan Area Components: Baltimore-Towson, MD MSA Columbia city, MD HMFA	1.027	1.025
Boston-Cambridge-Quincy, MA-NH MSA Metropolitan Area Components: Boston-Cambridge-Quincy, MA-NH HMFA Brockton, MA HMFA Lawrence, MA-NH HMFA Lowell, MA HMFA Portsmouth-Rochester, NH HMFA Western Rockingham County, NH HMFA	1.023	1.017
Boulder, CO MSA	1.000	1.000
Bremerton-Silverdale, WA MSA	1.000	1.000

SCHEDULE C - TABLE 2 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Bridgeport-Stamford-Norwalk, CT MSA Metropolitan Area Components: Bridgeport, CT HMFA Danbury, CT HMFA Stamford-Norwalk, CT HMFA	1.035	1.034
Chicago-Naperville-Joliet, IL-IN-WI MSA Metropolitan Area Components: Chicago-Naperville-Joliet, IL HMFA DeKalb County, IL HMFA Gary, IN HMFA Grundy County, IL HMFA Jasper County, IN HMFA Kenosha County, WI HMFA	1.014	1.010
Cincinnati-Middletown, OH-KY-IN MSA Metropolitan Area Components: Brown County, OH HMFA Cincinnati-Middleton, OH-KY-IN HMFA Grant County, KY HMFA	1.000	1.000
Cleveland-Elyria-Mentor, OH MSA	1.018	1.011
Culpeper County, VA	1.027	1.025
Dallas-Fort Worth-Arlington, TX MSA Metropolitan Area Components: Dallas, TX HMFA Fort Worth-Arlington, TX HMFA Wise County, TX HMFA	1.000	1.000
Denver-Aurora, CO MSA	1.000	1.000
Detroit-Warren-Livonia, MI MSA Metropolitan Area Components: Detroit-Warren-Livonia, MI HMFA Livingston County, MI HMFA	1.011	1.000
Flint, MI MSA	1.013	1.000
Greeley, CO MSA	1.000	1.000
Hagerstown-Martinsburg, MD-WV MSA	1.027	1.025
Henderson County, TX	1.000	1.000
Honolulu, HI MSA	1.026	1.025

SCHEDULE C - TABLE 2 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Hood County, TX	1.000	1.000
Houston-Baytown-Sugar Land, TX MSA Metropolitan Area Components: Austin County, TX HMFA Brazoria County, TX HMFA Houston-Baytown-Sugar Land, TX HMFA	1.009	1.000
Island County, WA	1.000	1.000
Kankakee-Bradley, IL MSA	1.014	1.009
Kansas City, MO-KS MSA Metropolitan Area Components: Bates County, MO HMFA Franklin County, KS HMFA Kansas City, MO-KS HMFA	1.012	1.004
King George County, VA	1.027	1.025
Lenawee County, MI	1.012	1.000
Los Angeles-Long Beach-Santa Ana, CA MSA Metropolitan Area Components: Los Angeles-Long Beach, CA HMFA Orange County, CA HMFA	1.048	1.055
Manchester-Nashua, NH MSA Metropolitan Area Components: Hillsborough County, NH (part) HMFA Manchester, NH HMFA Nashua, NH HMFA	1.024	1.016
Miami-Fort Lauderdale-Miami Beach, FL MSA	1.046	1.048
Milwaukee-Waukesha-West Allis, WI MSA	1.010	1.007
Minneapolis-St. Paul-Bloomington, MN-WI MSA	1.005	1.000
Monroe, MI MSA	1.012	1.000
Napa, CA MSA	1.000	1.000
New Haven-Milford, CT MSA Metropolitan Area Components: Milford-Ansonia-Seymour, CT HMFA New Haven-Meriden, CT HMFA Waterbury, CT HMFA	1.036	1.034

SCHEDULE C - TABLE 2 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA Metropolitan Area Components: Bergen-Passaic, NJ HMFA Jersey City, NJ HMFA Middlesex-Somerset-Hunterdon, NJ HMFA Nassau-Suffolk, NY HMFA New York-Monmouth-Ocean, NY-NJ HMFA Newark, NJ HMFA Pike County, PA HMFA	1.035	1.034
Ocean City, NJ MSA	1.037	1.033
Olympia, WA MSA	1.000	1.000
Oxnard-Thousand Oaks-Ventura, CA MSA	1.048	1.055
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	1.036	1.033
Phoenix-Mesa-Scottsdale, AZ MSA	1.000	1.000
Pittsburgh, PA MSA Metropolitan Area Components: Armstrong County, PA HMFA Pittsburgh, PA HMFA	1.023	1.016
Portland-Vancouver-Beaverton, OR-WA MSA	1.000	1.000
Poughkeepsie-Newburgh-Middletown, NY MSA	1.036	1.034
Racine, WI MSA	1.011	1.007
Riverside-San Bernardino-Ontario, CA MSA	1.042	1.055
Salem, OR MSA	1.000	1.000
San Diego-Carlsbad-San Marcos, CA MSA	1.040	1.044
San Francisco-Oakland-Fremont, CA MSA Metropolitan Area Components: Oakland-Fremont, CA HMFA San Francisco, CA HMFA	1.000	1.000
San Jose-Sunnyvale-Santa Clara, CA MSA Metropolitan Area Components: San Benito County, CA HMFA San Jose-Sunnyvale-Santa Clara, CA HMFA	1.000	1.000

SCHEDULE C - TABLE 2 - 2006 CONTRACT RENT AAFS 10/18/05

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Santa Cruz-Watsonville, CA MSA	1.000	1.000
Santa Rosa-Petaluma, CA MSA	1.000	1.000
Seattle-Tacoma-Bellevue, WA MSA Metropolitan Area Components: Seattle-Bellevue, WA HMFA Tacoma, WA HMFA	1.000	1.000
St. Louis, MO-IL MSA Metropolitan Area Components: Bond County, IL HMFA Macoupin County, IL HMFA St. Louis, MO-IL HMFA Washington County, MO HMFA	1.025	1.021
Tampa-St. Petersburg-Clearwater, FL MSA	1.031	1.013
Trenton-Ewing, NJ MSA	1.036	1.034
Vallejo-Fairfield, CA MSA	1.000	1.000
Vineland-Millville-Bridgeton, NJ MSA	1.037	1.033
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA Metropolitan Area Components: Jefferson County, WV HMFA Warren County, VA HMFA Washington-Arlington-Alexandria, DC-VA-MD HMFA	1.026	1.025
Westchester County, NY	1.035	1.034
Worcester, MA MSA Metropolitan Area Components: Eastern Worcester County, MA HMFA Fitchburg-Leominster, MA HMFA Western Worcester County, MA HMFA Worcester, MA HMFA	1.025	1.016

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

ALABAMA (SOUTH)

METROPOLITAN COUNTIES
Autauga, Bibb, Blount, Calhoun, Chilton, Colbert, Elmore, Etowah, Geneva, Greene, Hale, Henry, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa, Walker.

NONMETROPOLITAN COUNTIES
Baldwin, Barbour, Bullock, Butler, Chambers, Cherokee, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, De Kalb, Escambia, Fayette, Franklin, Jackson, Lamar, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Washington, Wilcox, Winston.

ALASKA (WEST)

CPI AREAS:	COUNTIES
Anchorage, AK MSA	
Metropolitan Area Components:	
Anchorage, AK HMFA	Anchorage
Matanuska-Susitna Borough, AK HMFA	Matanuska-Susitna

METROPOLITAN COUNTIES
Fairbanks North Star

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Bristol Bay, Denali, Dillingham, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Lake & Peninsula, Nome, North Slope, Northwest Arctic, Pr. Wales-Outer Ketchikan, Sitka, Skagway-Hoonah-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukatat, Yukon-Koyukuk.

ARIZONA (WEST)

CPI AREAS:	COUNTIES
Phoenix-Mesa-Scottsdale, AZ MSA	Maricopa, Pinal

METROPOLITAN COUNTIES
Coconino, Pima, Yuma, Yavapai.

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Santa Cruz.

ARKANSAS (SOUTH)

METROPOLITAN COUNTIES
Benton, Cleveland, Craighead, Crawford, Crittenden, Faulkner, Franklin, Garland, Grant, Jefferson, Lincoln, Lonoke, Madison, Miller, Perry, Pulaski, Saline, Sebastian, Washington.

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Columbia, Conway, Cross, Dallas, Desha, Drew, Fulton, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Little River, Logan, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell.

CALIFORNIA (WEST)

CPI AREAS:	COUNTIES
Los Angeles-Long Beach-Santa Ana, CA MSA	
Metropolitan Area Components:	
Los Angeles-Long Beach, CA HMFA	Los Angeles
Orange County, CA HMFA:	Orange
Napa, CA MSA	Napa
Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura
Riverside-San Bernardino, CA MSA:	Riverside, San Bernardino
San Diego-Carlsbad-San Marcos, CA MSA:	San Diego

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

CALIFORNIA (Cont.)

CPI AREAS (Cont'd):	COUNTIES
San Francisco-Oakland-Fremont, CA MSA	
Metropolitan Area Components:	
Oakland-Fremont, CA HMFA	Alameda, Contra Costa
San Francisco, CA HMFA	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA MSA	
Metropolitan Area Components:	
San Benito County, CA HMFA	San Benito
San Jose-Sunnydale-Santa Clara, CA HMFA	Santa Clara
Santa Cruz-Watsonville, CA MSA:	Santa Cruz
Santa Rosa-Petaluma, CA MSA:	Sonoma
Vallejo-Fairfield, CA MSA:	Solano

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Kings, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba.

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, Sierra, Siskiyou, Tehama, Trinity, Tuolumne.

COLORADO (WEST)

CPI AREAS:	COUNTIES
Boulder, CO MSA:	Boulder
Denver-Aurora, CO MSA:	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park.
Greeley, CO MSA:	Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Mesa, Pueblo.

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Fremont, Garfield, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma.

CONNECTICUT (NORTHEAST)

CPI AREAS:	COUNTIES/TOWNS
Bridgeport-Stamford-Norwalk, CT MSA	
Metropolitan Area Components:	
Bridgeport, CT HMFA	Fairfield County towns of Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull
Danbury, CT HMFA	Fairfield County towns of Bethel, Brookfield, Danbury, New Fairfield, Newtown, Redding, Ridgefield, Sherman.
Stamford-Norwalk, CT HMFA	Fairfield County towns of Darien, Greenwich, New Canaan, Norwalk, Stamford, Weston, Westport, Wilton
New Haven-Milford, CT MSA	
Metropolitan Area Components:	
Milford-Ansonia-Seymour, CT HMFA	New Haven County towns of Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour
New Haven-Meriden, CT HMFA	New Haven County towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, Woodbridge
Waterbury, CT HMFA	New Haven County towns of Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

CONNECTICUT (Cont.)

METROPOLITAN COUNTIES
Hartford, Middlesex, New London, Tolland.

NONMETROPOLITAN COUNTIES
Litchfield, Windham.

DELAWARE (SOUTH)

CPI AREAS:	COUNTIES
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA:	New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (SOUTH)

CPI AREAS:	COUNTIES
Washington-Arlington-Alexandria, DC-VA-MD HMFA :	District of Columbia

FLORIDA (SOUTH)

CPI AREAS:	COUNTIES
Miami-Fort Lauderdale-Miami Beach, FL MSA:	Broward, Miami-Dade, Palm Beach
Tampa-St. Petersburg-Clearwater, FL MSA:	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Baker, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Gadsden, Gilchrist, Indian River, Jefferson, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia, Wakulla.

NONMETROPOLITAN COUNTIES
Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Flagler, Franklin, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Walton, Washington.

GEORGIA (SOUTH)

CPI AREAS:	COUNTIES
Atlanta-Sandy Springs-Marietta, GA MSA	
Metropolitan Area Components:	
Atlanta-Sandy Springs-Marietta, GA HMFA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Butts County, GA HMFA	Butts
Haralson County, GA HMFA	Haralson
Lamar County, GA HMFA	Lamar
Meriwether County, GA HMFA	Meriwether

METROPOLITAN COUNTIES
Baker, Bibb, Brantley, Brooks, Bryan, Burke, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Crawford, Dade, Dougherty, Echols, Effingham, Floyd, Glynn, Hall, Harris, Houston, Jones, Lanier, Lee, Liberty, Long, Lowndes, Madison, Marion, McDuffie, McIntosh, Monroe, Murray, Muscogee, Oconee, Oglethorpe, Richmond, Terrell, Twiggs, Walker, Whitfield, Worth.

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Bulloch, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dodge, Dooly, Early, Elbert, Emanuel, Evans, Fannin, Franklin, Gilmer, Glascock, Gordon, Grady, Greene, Habersham, Hancock, Hart, Irwin, Jackson, Jeff Davis, Jefferson, Jenkins, Johnson, Laurens, Lincoln, Lumpkin, Macon, Miller, Mitchell, Montgomery, Morgan, Peach, Pierce, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Wilcox, Wilkes, Wilkinson.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

HAWAII (WEST)

CPI AREAS:	COUNTIES
STATE Hawaii:	Hawaii, Honolulu, Kalawao, Kauai, Maui

IDAHO (WEST)

METROPOLITAN COUNTIES
Ada, Bannock, Boise, Bonneville, Canyon, Franklin, Gem, Jefferson, Kootenai, Nez Perce, Owyhee, Power.

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Bonner, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Fremont, Gooding, Idaho, Jerome, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Oneida, Payette, Shoshone, Teton, Twin Falls, Valley, Washington.

ILLINOIS (MIDWEST)

CPI AREAS:	COUNTIES
Chicago-Naperville-Joliet, IL-IN-WI MSA	
Metropolitan Area Components:	
Chicago-Naperville-Joliet, IL HMFA:	Cook, Dupage, Kane, Kendall, Lake, McHenry, Will
De Kalb County, IL HMFA:	De Kalb
Grundy County, IL:	Grundy
Kankakee-Bradley, IL MSA:	Kankakee
St. Louis, MO-IL MSA	
Metropolitan Area Components:	
Bond County, IL HMFA:	Bond
Macoupin County, IL HMFA:	Macoupin
St. Louis, MO-IL HMFA:	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Ford, Henry, Macon, McLean, Marshall, Menard, Mercer, Peoria, Piatt, Rock Island, Sangamon, Stark, Tazewell, Vermilion, Winnebago, Woodford.

NONMETROPOLITAN COUNTIES
Adams, Alexander, Brown, Bureau, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Marion, Mason, Massac, McDonough, Montgomery, Morgan, Moultrie, Ogle, Perry, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stephenson, Union, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson.

INDIANA (MIDWEST)

CPI AREAS:	COUNTIES
Chicago-Naperville-Joliet, IL-IN-WI MSA	
Metropolitan Area Components:	
Gary, IN HMFA:	Lake, Newton, Porter
Jasper County, IN HMFA	Jasper
Cincinnati-Middleton, OH-KY-IN HMFA:	Dearborn, Franklin, Ohio.

METROPOLITAN COUNTIES
Allen, Bartholomew, Benton, Boone, Brown, Carroll, Clark, Clay, Delaware, Elkhart, Floyd, Gibson, Greene, Hamilton, Hancock, Harrison, Hendricks, Howard, Johnson, La Porte, Madison, Marion, Monroe, Morgan, Owen, Posey, Putnam, Shelby, St. Joseph, Sullivan, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Washington, Wells, Whitley.

NONMETROPOLITAN COUNTIES
Adams, Blackford, Cass, Clinton, Crawford, Daviess, Decatur, De Kalb, Dubois, Fayette, Fountain, Fulton, Grant, Henry, Huntington, Jackson, Jay, Jefferson, Jennings, Knox, Kosciusko, LaGrange, Lawrence, Marshall, Martin, Miami, Montgomery, Noble, Orange, Parke, Perry, Pike, Pulaski, Randolph, Ripley, Rush, Scott, Spencer, Starke, Steuben, Switzerland, Union, Wabash, Warren, Wayne, White.

IOWA (MIDWEST)

METROPOLITAN COUNTIES
Benton, Black Hawk, Bremer, Dallas, Dubuque, Grundy, Guthrie, Harrison, Johnson, Jones, Linn, Madison, Mills, Polk, Pottawattamie, Scott, Story, Warren, Washington, Woodbury

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

IOWA (Cont.)

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Boone, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Hamilton, Hancock, Hardin, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Mahaska, Marion, Marshall, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Tama, Taylor, Union, Van Buren, Wapello, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright.

KANSAS (MIDWEST)

CPI AREAS:	COUNTIES
Kansas City, MO-KS MSA	
Metropolitan Area Components:	
Franklin County, KS HMFA	Franklin
Kansas City, MO-KS HMFA:	Johnson, Leavenworth, Linn, Miami, Wyandotte

METROPOLITAN COUNTIES
Butler, Doniphan, Douglas, Harvey, Jackson, Jefferson, Osage, Sedgwick, Shawnee, Sumner, Wabaunsee.

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Logan, Lyon, Marion, Marshall, McPherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace, Washington, Wichita, Wilson, Woodson.

KENTUCKY (SOUTH)

CPI AREAS:	COUNTIES
Cincinnati-Middleton, OH-KY-IN MSA	
Metropolitan Area Components:	
Cincinnati-Middleton OH-KY-IN HMFA:	Boone, Bracken, Campbell, Gallatin , Kenton, Pendleton
Grant County, KY HMFA:	Grant

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Christian, Clark, Daviess, Edmonson, Fayette, Greenup, Hancock, Hardin, Henderson, Henry, Jefferson, Jessamine, Larue, McLean, Meade, Nelson, Oldham, Scott, Shelby, Spencer, Trigg, Trimble, Warren, Webster, Woodford.

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Clay, Clinton, Crittenden, Cumberland, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Harlan, Harrison, Hart, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Madison, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McCreary, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Simpson, Taylor, Todd, Union, Washington, Wayne, Whitley, Wolfe.

LOUISIANA (SOUTH)

METROPOLITAN COUNTIES
Ascension, Bossier, Caddo, Calcasieu, Cameron, De Soto, East Baton Rouge, East Feliciana, Grant, Iberville, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. Helena, St. John the Baptist, St. Martin, St. Tammany, Terrebonne, West Baton Rouge, West Feliciana.

NONMETROPOLITAN COUNTIES
Acadia, Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Catahoula, Claiborne, Concordia, East Carroll, Evangeline, Franklin, Iberia, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Red River, Richland, Sabine, St. James, St. Landry, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, Webster, West Carroll, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MAINE (NORTHEAST)

METROPOLITAN COUNTIES
Androscoggin, Cumberland, Penobscot, Sagadahoc, York.

NONMETROPOLITAN COUNTIES
Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Piscataquis, Somerset, Waldo, Washington

MARYLAND (SOUTH)

CPI AREAS:	COUNTIES
Baltimore-Towson, MD MSA	
Metropolitan Area Components:	
Baltimore-Towson, MD HMFA:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city,
Columbia city, MD MSA	
Hagerstown-Martinsburg, MD-WV MSA:	Washington
Washington-Arlington-Alexandria, DC-VA-MD HMFA:	Calvert, Charles, Frederick, Montgomery, Prince George's
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	Cecil

METROPOLITAN COUNTIES
Allegany, Somerset, Wicomico.

NONMETROPOLITAN COUNTIES
Caroline, Dorchester, Garrett, Kent, St. Mary's, Talbot, Worcester

MASSACHUSETTS (NORTHEAST)

CPI AREAS:	COUNTIES
Boston-Cambridge-Quincy, MA-NH MSA	
Metropolitan Area Components:	
Boston-Cambridge-Quincy, MA-NH HMFA:	Essex County towns of Amesbury, Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Lynn, Lynnfield, Manchester-by-the-Sea, Marblehead, Middleton, Nahant, Newbury, Newburyport, Peabody, Rockport, Rowley, Salem city, Salisbury, Saugus, Swampscott, Topsfield, Wenham Middlesex County towns of Acton, Arlington, Ashby, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Reading, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn. Norfolk County towns of Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Plainville, Quincy, Randolph town, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham. Plymouth County towns of Carver, Duxbury, Hanover, Hingham, Hull, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Rockland, Scituate, Wareham. Suffolk county towns of Boston, Chelsea, Revere, Winthrop
Brockton, MA HMFA:	Norfolk County town of Avon. Plymouth County towns of Abington, Bridgewater, Brockton, East Bridgewater, Halifax, Hanson, Lakeville, Marion, Mattapoisett, Middleborough, Plympton, Rochester, West Bridgewater town, Whitman.
Lawrence, MA-NH HMFA	Essex County towns of Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, North Andover West Newbury.
Lowell, MA HMFA	Middlesex County town of Billerica, Chelmsford, Dracut, Dunstable, Groton, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (Cont.)

CPI AREAS:	COUNTIES
Worcester, MA MSA	
Metropolitan Area Components:	
Eastern Worcester County, MA HMFA:	Worcester County towns of Berlin, Blackstone, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Millville, Southborough, Upton.
Fitchburg-Leominster, MA HMFA:	Worcester County towns of Ashburnham, Fitchburg, Gardner, Leominster, Lunenburg, Templeton, Westminster, Winchendon.
Western Worcester County, MA HMFA:	Worcester County towns of Athol, Hardwick, Hubbardston, New Braintree, Petersham, Phillipston, Royalston, Warren.
Worcester, MA HMFA:	Worcester County towns of Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, North Brookfield, Oakham, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Uxbridge, Webster, Westborough, West Boylston, West Brookfield, Worcester.

METROPOLITAN COUNTIES
Barnstable, Berkshire, Bristol, Franklin, Hampden, Hampshire

NONMETROPOLITAN COUNTIES
Dukes, Nantucket

MICHIGAN (MIDWEST)

CPI AREAS:	COUNTIES
Ann Arbor, MI MSA:	Washtenaw
Detroit-Warren-Livonia, MI MSA	
Metropolitan Area Components:	
Detroit-Warren-Livonia, MI HMFA:	Lapeer, Macomb, Oakland, St. Clair, Wayne
Livingston County, MI HMFA:	Livingston
Flint, MI MSA:	Genesee
Lenawee County, MI:	Lenawee
Monroe, MI MSA:	Monroe

METROPOLITAN COUNTIES
Bay, Berrien, Barry, Calhoun, Clinton, Eaton, Ingham, Ionia, Jackson, Kalamazoo, Kent, Muskegon, Newaygo, Ottawa, Saginaw, Van Buren.

NONMETROPOLITAN COUNTIES
Alcona, Alger, Allegan, Alpena, Antrim, Arenac, Baraga, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Midland, Missaukee, Montcalm, Montmorency, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford.

MINNESOTA (MIDWEST)

CPI AREAS:	COUNTIES
Minneapolis-St. Paul-Bloomington, MN-WI MSA:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES
Benton, Carlton, Clay, Dodge, Houston, Olmsted, Polk, St. Louis, Stearns, Wabasha.

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, McLeod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MISSISSIPPI (SOUTH)

METROPOLITAN COUNTIES
Copiah, Desoto, Forrest, George, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Marshall, Perry, Rankin, Simpson, Stone, Tate, Tunica.

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Covington, Franklin, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Smith, Sunflower, Tallahatchie, Tippah, Tishomingo, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

MISSOURI (MIDWEST)

CPI AREAS:	COUNTIES
Kansas City, MO-KS MSA	
Metropolitan Area Components:	
Bates County, MO HMFA	Bates
Kansas City, MO-KS HMFA:	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Louis, MO-IL MSA	
Metropolitan Area Components:	
St. Louis, MO-IL HMFA:	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA:	Washington

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Callaway, Christian, Cole, Dallas, De Kalb, Greene, Howard, Jasper, McDonald, Moniteau, Newton, Osage, Polk, Webster.

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Benton, Bollinger, Butler, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cooper, Crawford, Dade, Daviess, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mercer, Miller, Mississippi, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, Ste. Genevieve, St. Francois, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Wayne, Worth, Wright.

MONTANA (WEST)

METROPOLITAN COUNTIES
Carbon, Cascade, Missoula, Yellowstone.

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, McCone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux.

NEBRASKA (MIDWEST)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Dixon, Lancaster, Sarpy, Saunders, Seward, Washington.

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Scotts Bluff, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEVADA (WEST)

METROPOLITAN COUNTIES
Carson, Clark, Storey, Washoe.

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, White Pine

NEW HAMPSHIRE (NORTHEAST)

CPI AREAS:	COUNTIES
Boston-Cambridge-Quincy, MA-NH MSA	
Metropolitan Area Components:	
Boston-Cambridge-Quincy, MA-NH HMFA:	Rockingham County towns of Seabrook, South Hampton
Lawrence, MA-NH HMFA:	Rockingham County towns of Atkinson, Chester, Danville, Derry, Fremont, Hampstead, Kingston, Newton, Plaistow, Raymond, Salem, Sandown, Windham
Portsmouth-Rochester, NH HMFA:	Rockingham County towns of Brentwood, East Kingston, Epping, Exeter, Greenland, Hampton, Hampton Falls, Kensington, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham Strafford County towns of Barrington, Dover, Durham, Farmington, Lee, Madbury, Middleton, Milton, New Durham, Rochester, Rollinsford, Somersworth, Strafford
Western Rockingham County, NH HMFA:	Rockingham County towns of Auburn, Candia, Deerfield, Londonderry, Northwood, Nottingham
Manchester-Nashua, NH MSA	
Metropolitan Area Components:	
Hillsborough County, NH (part) HMFA:	Hillsborough County towns of Antrim, Bennington, Deering, Francestown, Greenfield, Hancock, Hillsborough, Lyndeborough, New Boston, Peterborough, Sharon, Temple, Windsor
Manchester, NH HMFA:	Hillsborough County towns of Bedford, Goffstown, Manchester, Weare
Nashua, NH HMFA:	Hillsborough County towns of Amherst, Brookline, Greenville, Hollis, Hudson, Litchfield, Mason, Merrimack, Milford, Mont Vernon, Nashua, New Ipswich, Pelham, Wilton

NONMETROPOLITAN COUNTIES
Belknap, Carroll, Cheshire, Coos, Grafton, Merrimack, Sullivan.

NEW JERSEY (NORTHEAST)

CPI AREAS:	COUNTIES
Atlantic City, NJ:	Atlantic
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA	
Metropolitan Area Components:	
Bergen-Passaic, NJ HMFA:	Bergen, Passaic
Jersey City, NJ HMFA:	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA:	Hunterdon, Middlesex, Somerset
New York-Monmouth-Ocean, NY-NJ HMFA:	Monmouth, Ocean
Newark, NJ HMFA:	Essex, Morris, Sussex, Union
Ocean City, NJ MSA:	Cape May
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA:	Mercer
Vineland-Millville-Bridgeton, NJ MSA:	Cumberland

METROPOLITAN COUNTIES
Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEW MEXICO (WEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Sandoval, San Juan, Santa Fe, Torrance, Valencia.

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, De Baca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Miguel, Sierra, Socorro, Taos, Union.

NEW YORK (NORTHEAST)

CPI AREAS:	COUNTIES
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA	
Metropolitan Area Components:	
Nassau-Suffolk, NY HMFA:	Nassau, Suffolk
New York-Monmouth-Ocean, NY-NJ HMFA:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA:	Dutchess, Orange
Westchester County, NY HMFA:	Westchester

METROPOLITAN COUNTIES
Albany, Broome, Chemung, Erie, Herkimer, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren, Washington, Wayne.

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Cayuga, Chautauqua, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Jefferson, Lewis, Montgomery, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Wyoming, Yates.

NORTH CAROLINA (SOUTH)

METROPOLITAN COUNTIES
Alamance, Alexander, Anson, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Greene, Guilford, Haywood, Henderson, Hoke, Johnston, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pender, Person, Pitt, Randolph, Rockingham, Stokes, Union, Wake, Wayne, Yadkin.

NONMETROPOLITAN COUNTIES
Alleghany, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Davidson, Duplin, Gates, Graham, Granville, Halifax, Harnett, Hertford, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Lincoln, Macon, Martin, McDowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Perquimans, Polk, Richmond, Robeson, Rowan, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey.

NORTH DAKOTA (MIDWEST)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton.

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams.

OHIO (MIDWEST)

CPI AREAS:	COUNTIES
Akron, OH MSA:	Portage, Summit
Ashtabula County, OH:	Ashtabula
Cincinnati-Middleton, OH-KY-IN MSA	
Metropolitan Area Components:	
Brown County, OH HMFA:	Brown
Cincinnati-Middleton OH-KY-IN HMFA:	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH:	Cuyahoga, Geauga, Lake, Lorain, Medina

METROPOLITAN COUNTIES
Allen, Belmont, Carroll, Clark, Delaware, Erie, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Morrow, Ottawa, Pickaway, Preble, Richland, Stark, Trumbull, Union, Washington, Wood.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

OHIO (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Auglaize, Champaign, Clinton, Columbiana, Coshocton, Crawford, Darke, Defiance, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Muskingum, Noble, Paulding, Perry, Pike, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Van Wert, Vinton, Wayne, Williams, Wyandot.

OKLAHOMA (SOUTH)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Grady, Le Flore, Lincoln, Logan, McClain, Oklahoma, Okmulgee, Osage, Pawnee, Rogers, Sequoyah, Tulsa, Wagoner.

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Love, Major, Marshall, Mayes, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Ottawa, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward.

OREGON (WEST)

CPI AREAS:	COUNTIES
Portland-Vancouver-Beaverton, OR-WA MSA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA:	Marion, Polk

METROPOLITAN COUNTIES
Benton, Deschutes, Jackson, Lane.

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler.

PENNSYLVANIA (NORTHEAST)

CPI AREAS:	COUNTIES
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA	
Metropolitan Area Components:	
Pike County, PA HMFA:	Pike
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA:	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA MSA:	
Metropolitan Area Components:	
Armstrong County, PA HMFA:	Armstrong
Pittsburgh, PA HMFA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Wyoming, York.

NONMETROPOLITAN COUNTIES
Adams, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, McKean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

RHODE ISLAND (NORTHEAST)

METROPOLITAN COUNTIES
Bristol, Kent, Newport, Providence, Washington.

SOUTH CAROLINA (SOUTH)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Calhoun, Charleston, Darlington, Dorchester, Edgefield, Fairfield, Florence, Greenville, Horry, Kershaw, Laurens, Lexington, Pickens, Richland, Saluda, Spartanburg, Sumter, York.

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Dillon, Georgetown, Greenwood, Hampton, Jasper, Lancaster, Lee, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Union, Williamsburg.

SOUTH DAKOTA (MIDWEST)

METROPOLITAN COUNTIES
Lincoln, McCook, Meade, Minnehaha, Pennington, Turner, Union.

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, McPherson, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Walworth, Yankton, Ziebach.

TENNESSEE (SOUTH)

METROPOLITAN COUNTIES
Anderson, Blount, Bradley, Cannon, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Grainger, Hamblen, Hamilton, Hawkins, Hickman, Jefferson, Knox, Loudon, Macon, Madison, Marion, Montgomery, Polk, Robertson, Rutherford, Sequatchie, Shelby, Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi, Union, Washington, Williamson, Wilson.

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Campbell, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Decatur, De Kalb, Dyer, Fentress, Franklin, Gibson, Giles, Greene, Grundy, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Houston, Humphreys, Jackson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Marshall, Maury, McMinn, McNairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Putnam, Rhea, Roane, Scott, Sevier, Van Buren, Warren, Wayne, Weakley, White.

TEXAS (SOUTH)

CPI AREAS:	COUNTIES
Dallas-Fort Worth-Arlington, TX MSA	
Metropolitan Area Components:	
Dallas, TX HMFA:	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
Fort Worth-Arlington, TX HMFA:	Johnson, Parker, Tarrant
Wise County, TX HMFA:	Wise
Henderson County, TX:	Henderson
Hood County, TX:	Hood
Houston-Baytown-Sugar Land, TX MSA	
Metropolitan Area Components:	
Austin, County, TX HMFA:	Austin
Brazoria County, TX HMFA:	Brazoria
Houston-Baytown-Sugar Land, TX HMFA:	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller

METROPOLITAN COUNTIES
Aransas, Archer, Armstrong, Atascosa, Bandera, Bastrop, Bell, Bexar, Bowie, Brazos, Burleson, Caldwell, Calhoun, Callahan, Cameron, Carson, Clay, Comal, Coryell, Crosby, Ector, El Paso, Goliad, Grayson, Gregg, Guadalupe, Hardin, Hays, Hidalgo, Irion, Jefferson, Jones, Kendall, Lampasas, Lubbock, McLennan, Medina, Midland, Nueces, Orange, Potter, Randall, Robertson, Rusk, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Bailey, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burnet, Camp, Cass, Castro, Cherokee, Childress, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Culberson, Dallam, Dawson, Deaf Smith, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamar, Lamb, La Salle, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McMullen, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Runnels, Sabine, San Augustine, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wood, Yoakum, Young, Zapata, Zavala.

UTAH (WEST)

METROPOLITAN COUNTIES
Cache, Davis, Juab, Morgan, Salt Lake, Summit, Tooele, Utah, Washington, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Kane, Millard, Piute, Rich, San Juan, Sanpete, Sevier, Uintah, Wasatch, Wayne.

VERMONT (NORTHEAST)

METROPOLITAN COUNTIES
Chittenden, Franklin, Grand Isle.

NONMETROPOLITAN COUNTIES
Addison, Bennington, Caledonia, Essex, Lamoille, Orange, Orleans, Rutland, Washington, Windham, Windsor

VIRGINIA (SOUTH)

CPI AREAS:	COUNTIES
Culpeper County, VA:	Culpeper
King George County, VA:	King George
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA	
Metropolitan Area Components:	
Warren County, VA HMFA:	Warren
Washington-Arlington-Alexandria, DC-VA-MD HMFA:	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amelia, Amherst, Appomattox, Bedford, Botetourt, Campbell, Caroline, Charles City, Chesterfield, Craig, Cumberland, Dinwiddie, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, King William, King and Queen, Louisa, Mathews, Montgomery, New Kent, Nelson, Pittsylvania, Powhatan, Prince George, Pulaski, Roanoke, Rockingham, Scott, Surry, Sussex, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city.

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Carroll, Charlotte, Dickenson, Essex, Floyd, Grayson, Greensville, Halifax, Henry, Highland, Lancaster, Lee, Lunenburg, Madison, Mecklenburg, Middlesex, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Rappahannock, Richmond, Rockbridge, Russell, Shenandoah, Smyth, Southampton, Tazewell, Westmoreland, Wise, Wythe, Buena Vista city, Clifton Forge city, Covington city, Emporia city, Franklin city, Galax city, Lexington city, Martinsville city, Norton city, Staunton city, Waynesboro city.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

WASHINGTON (WEST)

CPI AREAS:	COUNTIES
Bremerton-Silverdale, WA MSA:	Kitsap
Island County, WA:	Island
Olympia, WA MSA:	Thurston
Portland-Vancouver, OR-WA MSA:	Clark, Skamania,
Seattle-Tacoma-Bellevue, WA MSA	
Metropolitan Area Components:	
Seattle-Tacoma-Bellevue, WA HMFA:	King, Snohomish
Tacoma, WA HMFA:	Pierce

METROPOLITAN COUNTIES
Asotin, Benton, Chelan, Cowlitz, Douglas, Franklin, Skagit, Spokane, Whatcom, Yakima.

NONMETROPOLITAN COUNTIES
Adams, Clallam, Columbia, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Stevens, Wahkiakum, Walla Walla, Whitman.

WEST VIRGINIA (SOUTH)

CPI AREAS:	COUNTIES
Hagerstown-Martinsburg, MD-WV MSA::	Berkeley, Morgan
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA	
Metropolitan Area Components:	
Jefferson County, WV HMFA:	Jefferson

METROPOLITAN COUNTIES
Boone, Brooke, Cabell, Clay, Hampshire, Hancock, Kanawha, Lincoln, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Putnam, Wayne, Wirt, Wood

NONMETROPOLITAN COUNTIES
Barbour, Braxton, Calhoun, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hardy, Harrison, Jackson, Lewis, Logan, Marion, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wyoming.

WISCONSIN (MIDWEST)

CPI AREAS:	COUNTIES
Milwaukee-Waukesha-West Allis, WI MSA:	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
Racine, WI MSA:	Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Columbia, Dane, Douglas, Eau Claire, Fond du Lac, Iowa, Kenosha, Kewaunee, La Crosse, Marathon, Oconto, Outagamie, Rock, Sheboygan, Winnebago.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Crawford, Dodge, Door, Dunn, Florence, Forest, Grant, Green, Green Lake, Iron, Jackson, Jefferson, Juneau, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood.

WYOMING (WEST)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston.

PACIFIC ISLANDS (WEST)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau.

PUERTO RICO (SOUTH)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guanica, Guayama, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Isabela, Juana Diaz, Juncos, Lajas, Lares, Las Piedras, Loiza, Luquillo, Manati, Maunabo, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, San Sebastian , Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco.

NONMETROPOLITAN COUNTIES
Adjuntas, Coamo, Culerbra, Jayuya, Las Marias, Maricao, Salinas, Santa Isabel, Utuado, Vieques.

VIRGIN ISLANDS (SOUTH)

NONMETROPOLITAN COUNTIES
Virgin Island

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CFR PARTS AFFECTED DURING DECEMBER

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 1, 2005

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Correction; published 12-1-05

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Export administration regulations:
Import certificate requirement; revision; published 12-1-05

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Georgia and Washington; published 11-2-05
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Organization, functions, and authority delegations:
American Society for Testing Materials; address change; technical amendment; published 12-1-05

HOMELAND SECURITY DEPARTMENT
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Drawbridge operations:
New York; published 11-2-05
Tennessee; published 11-2-05

PENSION BENEFIT GUARANTY CORPORATION
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing and paying benefits; published 11-15-05

POSTAL SERVICE
Organization and administration:
Postal property conduct; published 12-1-05

SECURITIES AND EXCHANGE COMMISSION
Securities:
Securities offerings reform; registration; communications, and offering processes; modification; published 8-3-05

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Fokker; published 11-16-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Beef promotion and research; comments due by 12-5-05; published 10-5-05 [FR 05-20016]
Cherries (tart) grown in—
Michigan et al.; comments due by 12-7-05; published 11-7-05 [FR 05-22115]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and zone designations; comments due by 12-5-05; published 10-6-05 [FR 05-20098]
Plant-related quarantine, domestic:
Karnal bunt; comments due by 12-5-05; published 10-5-05 [FR 05-19943]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Turkey operations; J-type cut maximum line speeds use of bar-type cut; comments due by 12-8-05; published 9-9-05 [FR 05-17887]

CIVIL RIGHTS COMMISSION
State advisory committees; operations and functions:
Membership criteria; comments due by 12-5-05; published 11-4-05 [FR 05-21986]

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National Oceanic and Atmospheric Administration
Endangered and threatened species:
Marine and anadromous species—
West coast oncorhynchus mykiss; 10 evolutionary significant units; delineation; comments due by 12-5-05; published 11-4-05 [FR 05-22043]
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Grouper; comments due by 12-7-05; published 11-22-05 [FR 05-23102]
Spanish mackerel; comments due by 12-9-05; published 11-9-05 [FR 05-22364]
West Coast States and Western Pacific fisheries—
West Coast salmon; comments due by 12-5-05; published 11-18-05 [FR 05-22858]
West Coast salmon; comments due by 12-5-05; published 11-18-05 [FR 05-22863]
International fisheries regulations:
Atlantic highly migratory species—
Fraser River sockeye salmon; inseason orders; comments due by 12-5-05; published 11-18-05 [FR 05-22862]

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Federal Acquisition Regulation (FAR):
Additional contract types for certain commercial services; comments due by 12-9-05; published 11-29-05 [FR 05-23394]
Time-and-materials and labor-hour contracts payments; comments due by 12-9-05; published 11-29-05 [FR 05-23395]

DEFENSE DEPARTMENT
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Bonneville Lock and Dam, OR and WA; lockage operations and restricted areas changes; comments due by 12-8-05; published 10-24-05 [FR 05-21171]

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Industrial process cooling towers; comments due by 12-8-05; published 10-24-05 [FR 05-21188]
Magnetic tape manufacturing operations; comments due by 12-8-05; published 10-24-05 [FR 05-21186]
Sterilization facilities; ethylene oxide emissions; comments due by 12-8-05; published 10-24-05 [FR 05-21187]
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Stratospheric ozone protection—
Foam blowing substitutes for ozone-depleting substances; unacceptable substitutes list; comments due by 12-5-05; published 11-4-05 [FR 05-21927]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Virginia; comments due by 12-5-05; published 11-4-05 [FR 05-22031]
Radiation protection programs:
Energy Department; Waste Isolation Pilot Plant compliance recertification application; comments due by 12-5-05; published 10-20-05 [FR 05-20987]
Superfund program:
Emergency planning and community right-to-know—
Air releases of NOx (NO and NO2); administrative reporting exemption; comments due by 12-5-05; published 10-4-05 [FR 05-19872]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

In the **List of Public Laws** printed in the *Federal Register* on November 28, 2005, the title of S. 1894, Public Law 109–113, was incorrectly printed. It should read as follows:

S. 1894/P.L. 109–113

Fair Access Foster Care Act of 2005 (Nov. 22, 2005; 119 Stat. 2371)

Last List November 25, 2005

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 2005

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Dec 1	Dec 16	Jan 3	Jan 17	Jan 30	March 1
Dec 2	Dec 19	Jan 3	Jan 17	Jan 31	March 2
Dec 5	Dec 20	Jan 4	Jan 19	Feb 3	March 6
Dec 6	Dec 21	Jan 5	Jan 20	Feb 6	March 6
Dec 7	Dec 22	Jan 6	Jan 23	Feb 6	March 7
Dec 8	Dec 23	Jan 9	Jan 23	Feb 6	March 8
Dec 9	Dec 27	Jan 9	Jan 23	Feb 7	March 9
Dec 12	Dec 27	Jan 11	Jan 26	Feb 10	March 13
Dec 13	Dec 28	Jan 12	Jan 27	Feb 13	March 13
Dec 14	Dec 29	Jan 13	Jan 30	Feb 13	March 14
Dec 15	Dec 30	Jan 17	Jan 30	Feb 13	March 15
Dec 16	Jan 3	Jan 17	Jan 30	Feb 14	March 16
Dec 19	Jan 3	Jan 18	Feb 2	Feb 17	March 20
Dec 20	Jan 4	Jan 19	Feb 3	Feb 21	March 20
Dec 21	Jan 5	Jan 20	Feb 6	Feb 21	March 21
Dec 22	Jan 6	Jan 23	Feb 6	Feb 21	March 22
Dec 23	Jan 9	Jan 23	Feb 6	Feb 21	March 23
Dec 27	Jan 11	Jan 26	Feb 10	Feb 27	March 27
Dec 28	Jan 12	Jan 27	Feb 13	Feb 27	March 28
Dec 29	Jan 13	Jan 30	Feb 13	Feb 27	March 29
Dec 30	Jan 17	Jan 30	Feb 13	Feb 28	March 30