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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584–AD64

School Food Safety Inspections; Confirmation of Effective Date

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule; confirmation of effective date.

SUMMARY: The provisions of the interim rule entitled School Food Safety Inspections published on June 15, 2005, at 70 FR 34627, could not become effective until approval of the associated information collection requirements by the Office of Management and Budget (OMB). Those requirements were cleared by OMB on August 26, 2005 under OMB Control Number 0584–0006. This document announces the effective date of the information collection provisions contained in the originally-published rule.

DATES: The amendments to 210.15, 210.20 and 220.13 published in the **Federal Register** on June 15, 2005, at 70 FR 34627, are effective August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Rosemary O'Connell or Marisol Benesch, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302; telephone (703) 305–2590.

Dated: November 17, 2005.

Roberto Salazar,

Administrator.

[FR Doc. 05–23579 Filed 12–2–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AD69

Child and Adult Care Food Program: Permanent Agreements for Day Care Home Providers; Confirmation of Effective Date

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The provisions of the final rule entitled Permanent Agreements for Day Care Home Providers published on June 15, 2005 at 70 FR 34630 could not become effective until approval of the associated information collection requirements by the Office of Management and Budget (OMB). Those requirements were cleared by OMB on August 18, 2005 under OMB Control Number 0584–0055. This document announces the effective date of the provisions contained in the originally-published rule.

DATES: The amendments to 226.6(p) and 226.18(b), published in the **Federal Register** on June 15, 2005, at 70 FR 34630, are effective as of August 18, 2005.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

Dated: November 17, 2005.

Roberto Salazar,

Administrator.

[FR Doc. 05–23578 Filed 12–2–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AD67

Child and Adult Care Food Program: Increasing the Duration of Tiering Determinations for Day Care Homes; Confirmation of Effective Date

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The provisions of the final rule entitled, Child and Adult Care Food Program: Increasing the Duration of Tiering Determinations for Day Care Homes, published on February 22, 2005, at 70 FR 8501, could not become effective until approval of the associated information collection requirements by the Office of Management and Budget (OMB). Those requirements were cleared by OMB on August 18, 2005 under OMB Control Number 0584–0055. This document announces the effective date of the provisions contained in the originally-published rule.

DATES: The amendments to §§ 226.6(f)(1)(iii) and 226.15(f), published in the **Federal Register** on February 22, 2005, at 70 FR 8501, are effective as of August 18, 2005.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

Dated: November 17, 2005.

Roberto Salazar,

Administrator.

[FR Doc. 05–23580 Filed 12–2–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 274, 276, 278, 279, and 280

[Amendment No. 397]

RIN 0584–AD28

Food Stamp Program, Reauthorization: Electronic Benefit Transfer (EBT) and Retail Food Stores Provisions of the Food Stamp Reauthorization Act of 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides final rulemaking for a proposed rule published May 6, 2003. It revises Food Stamp Program regulations pertaining to the standards for approval of Electronic Benefits Transfer (EBT) systems, the participation of retail food stores and wholesale food concerns, and the State agency liabilities and Federal sanctions. These changes to the Food Stamp Program's regulations are put forth to implement sections 4108, 4110, 4113 and 4117 of the Food Stamp Reauthorization Act of 2002. These changes will allow the U.S. Department of Agriculture (Department) to use delivery methods other than certified mail when notifying retailers or State agencies of adverse action; permit the Department to approve alternate methods of issuing food stamp benefits during disasters; eliminate the requirement that Federal costs for EBT systems cannot exceed the costs of the paper systems they replace; and allow group homes and institutions to redeem EBT benefits directly through banks rather than going through authorized wholesalers or other retailers.

DATES: This rule is effective January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Mandy Briggs, Chief, EBT Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or telephone (703) 305–2523.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive order, a federalism summary impact statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Eric Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Departmental Field Offices, retailers participating or applying to participate in the Food Stamp Program, State agencies that distribute food stamp benefits and group living homes are the entities affected by this change. However, the number of those affected is not large enough to be considered significant.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. Information collections in this final rule have been previously approved by OMB under OMB number 0584–0083 (Operating Guidelines, Forms and Waivers).

The Food and Nutrition Service (FNS) published a proposed rule on May 6, 2003, which solicited comments on the proposed revisions to reduce the number of burden hours. No comments on the proposed burden were received; however, comments related to proposed changes to the regulations were received and are addressed in the Background section of this rule.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This rule accomplishes the intent of GPEA by facilitating EBT system procedures for the FSP, and thereby eliminating the need to print, distribute, and handle paper food stamp coupons in operation of the FSP.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or

more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Impact Analysis

1. Need for Action

This action is needed to formalize implementation of provisions of the Food Stamp Reauthorization Act of 2002 related to EBT and retailer operations. These changes will allow the Department to: (1) Use delivery methods other than certified mail when notifying retailers or State agencies of adverse action; (2) approve alternate methods of issuing food stamp benefits during disasters; (3) eliminate the requirement that Federal costs for EBT systems cannot exceed the costs of the paper systems they replace; and (4) permit group homes and institutions to redeem EBT benefits directly through banks rather than being restricted to authorized wholesalers or other retailers.

2. Benefits

Federal and State agencies will benefit from the provisions of this rule because they will streamline the administrative procedures that are already in place and codify current practice.

3. Costs

There will be minimal costs associated with outfitting group homes with point of sale (POS) devices. In Fiscal Year (FY) 2003, only 1,544 group homes existed in the United States, and the monthly average leasing cost of $26 would be equally shared between the Department and the State agencies if all group homes requested POS devices. Since many States have already been operating group homes in this way through demonstration waivers, most of these homes already have POS devices, minimizing the impact of any new costs. We estimate that eliminating the cost neutrality requirement on EBT systems cost less than $1 million per year during the first five years of enactment (FY 2002–FY 2006). There are no costs from the other two sections of the final rule.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes that are required to be implemented by law have been implemented. All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. (See 7 CFR 272.6.) Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Background

A proposed rule was published in the **Federal Register** on May 6, 2003 at 68 FR 23927 to revise Food Stamp Program regulations pertaining to the standards for approval of Electronic Benefits Transfer (EBT) systems, the participation of retail food stores and wholesale food concerns, and the State agency liabilities and Federal sanctions. Comments on the proposed rule were solicited through July 7, 2003. This final action takes the comments received into account.

In this rule, the Department amends Food Stamp Program regulations to expand the delivery of adverse action notices to retailers and State agencies, allow alternative issuance systems in disasters, eliminate the requirement for cost neutrality for EBT systems, and permit redemption of EBT benefits through group living facilities.

Thirteen comment letters were received in response to the proposed rule. Individual comments were received from four State agencies and nine public interest groups. In general, the commenters supported the proposed rule's changes. Readers are referred to the proposed regulation for a more complete understanding of this final action.

The only changes between the proposed and final rules are due to two oversights in the proposed rule. First, we are not finalizing the proposed portion of 7 CFR 274.12 that specifically provides that the cost of administering statewide benefit issuance after implementation of the EBT system should be funded at the regular Federal financial participation rate, up to the level of the current coupon issuance costs. This proposed portion of the sentence contains outdated information since coupon issuance is no longer a reality in the EBT system. Second, 7 CFR 278.2(g)(2) incorrectly proposed as mandatory the requirement that authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households redeem EBT benefits directly through an insured financial institution, although the requirement was correctly proposed as optional in the preamble. Therefore, we are now clarifying in this final rule that the requirement contained in 7 CFR 278.2(g)(2) of this final rule contains the word ''may'' instead of the word ''shall'' to indicate that this requirement is optional and not mandatory per interpretation of the Food Stamp Reauthorization Act of 2002 (FSRA).

Mailing to Retailers and State Agencies

The Department revises regulations at 7 CFR 276.7(b), 278.1(k)(7), 278.1(l)(2), 278.6(o), 278.7(b)(2), 278.7(f), and 279.7(b) to eliminate the requirement that the Department send notices of adverse actions to retailers and State agencies using certified mail. Effective May 13, 2002, section 4117 of the FSRA amended section 14(a)(2) of the Food Stamp Act of 1977 (Food Stamp Act) (7 U.S.C. 2023(a)(2)) to authorize the delivery of such notices in any form the Secretary determines will provide evidence of the delivery.

The Department received two comments on this provision. One commenter supported the revision, but felt that the State should be notified in advance of notices to retailers. FNS believes that this is not necessary since we have a direct relationship with retailers as part of retailer oversight responsibilities for the Food Stamp Program. Currently, any State interested in retailer notification consults with the FNS Regional Office. Some States do receive copies of letters to the retailer based on what is negotiated at the regional level. Therefore, no additional requirements are necessary at this time and the provision is finalized as proposed.

Alternative Issuance Systems in Disasters

This final rule revises Food Stamp Program regulations at 7 CFR 280.1 for emergency food assistance for victims of disasters. By terms of section 4108 of the FSRA, which amended section 5(h)(3)(B) of the Food Stamp Act (7 U.S.C. 2014(h)(3)(B)), the Department received authority to approve alternate methods for issuing food stamp benefits

during disasters when reliance on EBT systems is impracticable. This final rule amends the regulation to reflect this new authority.

Four comments were received on this issue. Two commenters fully supported this revision. Another commenter felt that the regulation should acknowledge that States should re-examine existing disaster plans in light of the new provision enabling a ''cash-out'' option in the event of catastrophic disaster. Congress, however, was clear in its intent that cash-out would not be implemented unless specific disaster circumstances made EBT unworkable. Consistent with the intent of the statutory amendment, as expressed by the Conference Committee, H.R. Conf. Rep. No. 107–424, at 264 (2002), the Department would only approve alternate issuance, such as cash, as a last resort, depending on the specific circumstances of the disaster.

Another commenter stated that cash is not always a viable alternate method of issuance, but suggested we extend the benefit and card issuance time frame to 10 days, from the current guideline of 3 days. The Department does not agree that this would be sensible in a disaster situation when there is an urgent need to assist people who are victims of a disaster and to get benefits to them as quickly as possible. Additionally, since each disaster situation is unique, we would only approve the specifics of a disaster plan on a case-by-case basis.

Cost Neutrality for EBT Systems

This provision eliminates the requirement at 7 CFR 274.12(e) that Federal costs of EBT systems not exceed the costs of the paper systems they replace as a condition of approval of State EBT systems, in accordance with section 4110 of the FSRA.

The elimination of the cost neutrality requirement does not remove the requirement for State agencies to submit Implementation Advanced Planning Documents (IAPDs) to the Department for approval prior to conversion to a new system or to making upgrades or changes to their existing EBT systems. We received one comment fully supporting this revision and none opposing it.

Redemption of Benefits Through Group Living Facilities

This final rule revises food stamp regulations regarding participation of group living facilities. By terms of section 4113 of the FSRA, a center, organization, institution, shelter, group living arrangement and establishment that are among those defined as retail food stores under section 3(k)(2) of the Food Stamp Act (7 U.S.C. 2012(k)(2)), may now be authorized to redeem benefits directly through financial institutions in areas where EBT has been implemented. The four types of entities affected by this change are drug addict and alcoholic treatment and rehabilitation programs; group living arrangements; shelters for battered women and children; and public or private nonprofit homeless meal providers. These group home facilities represent 1.64 percent of all firms in the program, while 98.4 percent are classified as traditional grocery stores.

In these situations, the facility functions like most authorized retailers, conducting EBT transactions with its residents, deducting benefits from their cards and depositing them into the facility's account. The facility can then purchase eligible foods at any authorized retailer or wholesaler with funds drawn directly from its own account. This makes it easier for those recipients residing in the authorized facilities to use their benefits in an EBT environment. Therefore, the Department is providing that group home facilities may be equipped with POS devices in a manner that meets the requirements established for retailers. These facilities would redeem benefits using the POS device, and then purchase eligible food items.

The Department did not receive any comments on the variety of ways that group homes operate. However, we are providing clarification that not all group homes must have the same EBT procedures in place. Some States have group homes that are not using POS devices, but instead assign an authorized representative from each group home to shop with one EBT card for everyone at authorized wholesalers. In this rule, the Department does not intend to preclude any States from redeeming EBT benefits in group homes that operate in a different manner.

The Department received 13 comments on the group home provision which is limited to the statutory provision allowing the facilities to deposit directly into financial institutions which allow them to use a POS device. One commenter fully supported this revision. Eleven commenters provided a variety of similar feedback on the operations or management process for these facilities, some of which were outside the narrow scope of this final rule. All comments are encompassed in the paragraphs that follow. We believe that current rules in CFR 273.11 provide adequate safeguards and address the most important of the commenters' concerns about fraud. Additionally, as fraud risks vary for each type of group home facility, they still remain much lower than when coupons were issued since EBT transactions can be tracked and monitored more easily than the old paper system.

Specifically, several commenters thought the rule should be limited to residential facilities, which is not allowable under the statute. The law specifies the four types of facilities that may be authorized to redeem benefits. The only entity that is not residential is the homeless meal providers; moreover, FNS feels it is good policy to provide services to homeless meal providers that cover a transient population.

Several commenters also thought the rule should be limited to group homes that actually provide meals for stays exceeding a month. Another comment relates to charging for actual meals served or only accessing a portion of the benefits for each meal served (no greater than 1/90th of the thrifty food plan). Both types of comments shared the same concern that the centers would take all of the recipient benefits on the first day they became available and put them in the centers' own account, leaving nothing for the household when it leaves the center. The comment to charge on a per meal basis or only a portion of the meal benefits represents a significant operational change that does not seem practical for these small facilities. In addition to the administrative burden placed on States and centers to charge on a per meal basis, it would be extremely difficult to track that the meals account for the correct portion of the benefits available.

Current rules at 7 CFR 273.11(e)(5) address State agency and center actions when the household leaves prior to the 16th of the month. Specifically, the rules prohibit drug and alcohol treatment centers and group living arrangements from obtaining more than half of the household's allotment prior to the 16th of the month when benefits are issued through an EBT system. These rules also require centers to return to households that leave before the 16th of the month one-half of their benefits. It specifically also states that after the household leaves the center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits. The center must also provide the departing households with their EBT cards at any time during the month.

Other commenters wanted to limit the use of POS devices to certain staff, require facilities to maintain records of meals charged to clients, and not allow

staff to collect personal identification numbers or cards.

As for limiting the use of POS devices to certain staff, this restriction would be extremely difficult to monitor or enforce. Additionally, FNS does not monitor who specifically uses POS devices in other firms (grocery stores) that participate in the program. Some commenters expressed concern about possible fraudulent abuse by employees of these centers; however, the regulations at 7 CFR 273.11 already contain significant protections against such abuse. Under current rules, centers are responsible for any over-payment or misuse, regardless of who does it. Additionally, the rules require centers to provide State agencies with monthly or semi-monthly lists of participating residents. In addition, States must conduct periodic random on-site visits to the center to assure the accuracy of records. The rules also describe how States must establish a claim for over-issuance of benefits and outline the steps that they would take prior to FNS disqualification of an authorized center.

Commenters also wanted centers to maintain records establishing that food purchases attributable to recipients at least equal the value of the benefits taken from those recipients. This suggestion has merit now that group homes can place benefits into their checking accounts. There would be some additional recording keeping requirements imposed on the facilities. 7 CFR 273.11 requires States to do random checks on the facilities anyway, and looking at the amount of food expenditures versus the benefits redeemed would not be unduly burdensome. This issue will be addressed in a future rulemaking and will be taken under consideration.

On the comment to not allow centers to collect PIN numbers or cards, it is important to emphasize that group homes operate in a variety of ways and this rule does not preclude centers from operating in different ways. Specifically, some centers act as the authorized representative for clients and must have access to PIN numbers and cards in order to redeem the food stamp benefits.

One commenter wanted facilities to be exempt from the minimum Food Stamp redemption activity per month to obtain State-provided POS terminals. It is important to emphasize that States already have this option. Current rules require that all authorized retailers be provided with POS devices regardless of its size. In some cases, at the State's request, they are issued retailer participation waivers so that POS deployment is not required for retailers with redemption levels less than $100 per month.

Another commenter said that monthly EBT statements should be provided to all recipients detailing the transactions. The Department does not agree that this is necessary. Current rules in 7 CFR 274.12 already require that clients be provided printed receipts at the time of transaction and be able to check their balance anytime without making a purchase or standing in a checkout line. Current rules also require State agencies to ensure that the EBT system is capable of providing a transaction history for a period of up to two calendar months to households upon request.

The same commenter provided comments on battered women and children's rights that included making benefits available to all battered women and not just women who leave an abusive household and reside in official shelters. The same commenter said FNS should implement procedures similar to the Family Violence Option of the Temporary Assistance for Needy Families (TANF) program and to waive regulations that make escaping from domestic violence more difficult, places individuals at risk of further violence, or penalizes individuals because of violence. The comments on battered women and children's rights are outside the scope of this rule.

The issue of extending the re-issuance provision to women who fled to the residences of friends or relatives was addressed in the comments of the final rule, Food Stamp Program: Certifying Residents of Shelters for Battered Women and Children, published at 46 FR 60160 on December 8, 1981. The re-issuance provision is detailed in 7 CFR 273.11(g)(3). Normally State data systems will prevent issuance of benefits to individuals who are already participating in another household. However, in the case of a mother and children who leave the household which contains the abuser, and apply as shelter residents, the State agency must override the normal system edit to allow the mother and children to be certified. The household with the abuser will potentially receive excess benefits until the benefit amount is reduced through the adverse action process.

The December 8, 1981 rule established the exception to the residents of institution ban for residents of shelters for battered women and children. At the time, the Department took the position that Congress intended the special provisions relative to shelters for battered women and children to apply only to residents of such shelters. We believe the suggestion would place a burden on State agencies to investigate or verify that domestic violence was an issue in the move, and not simply a move motivated by other reasons.

Equipping of these facilities would be in accordance with the EBT regulations at 7 CFR 274.12. State agencies approved to operate a demonstration project for this function may continue operations without further action and are no longer bound by the survey requirements of a demonstration project. This rulemaking does not affect current State operations.

Implementation

The provisions of this rule are effective January 4, 2006.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant Program—social programs, Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, State liabilities.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, State agency liabilities and federal sanctions.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, General line—wholesalers, Groceries, Groceries—retail, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line—wholesalers, Groceries, Groceries—retail.

7 CFR Part 280

Disaster assistance, Food stamps, Grant programs—social programs.

■ Accordingly, 7 CFR parts 272, 274, 276, 278, 279, and 280 are amended as follows:

■ 1. The authority citation for 7 CFR parts 272, 274, 276, 278, 279, and 280 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. In § 272.1, paragraph (g)(171) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(171) *Amendment No. 397.* The provisions of Amendment No. 397 are effective January 4, 2006. State agencies may implement the provisions anytime after the rule is published but no later than June 5, 2006.

PART 274—ISSUANCE AND USE OF COUPONS

■ 3. In § 274.10, paragraphs (f)(1), (f)(2) and (f)(3) are revised to read as follows:

§ 274.10 Use of identification cards and redemption of coupons by eligible households.

* * * * *

(f) * * *

(1) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment rehabilitation program may use food stamp benefits to purchase food prepared for them during the course of such program by a private nonprofit organization or institution or publicly operated community mental health center which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(2) Eligible residents of a group living arrangement may use food stamp benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

(3) Residents of shelters for battered women and children as defined in § 278.1(g) of this chapter may use their food stamp benefits to purchase meals prepared especially for them at a shelter which is authorized by FNS to redeem benefits in accordance with § 278.1 and § 278.2(g) of this chapter.

* * * * *

§ 274.12 [Amended]

■ 4. In § 274.12:

■ a. Paragraph (e) is removed, and paragraphs (f) through (o) are redesignated as paragraphs (e) through (n), respectively;

■ b. Newly redesignated paragraph (k)(1) is amended by removing the words ''up to the level of the current coupon issuance costs, as prescribed in paragraph (c)(3) of this section''.

■ c. Newly redesignated paragraph (k)(4) is removed and newly redesignated paragraph (k)(5) is further redesignated as paragraph(k)(4).

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

■ 5. In § 276.7, paragraph (b) is revised to read as follows:

§ 276.7 Administrative review process.

* * * * *

(b) *Notice of claim.* When asserting a claim against a State agency, FNS shall provide the notice to the State agency using any delivery method as long as the method provides evidence of the delivery.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 6. In § 278.1:

■ a. The first sentence in paragraph (e) is amended by removing the words ''through wholesalers food stamps received from or on behalf of their participants''; and adding in their place the word ''benefits'';

■ b. The first sentence in paragraph (f) is amended by removing the words ''coupons directly through wholesalers'' and adding in their place the word ''benefits'';

■ c. The first sentence in paragraph (g) is amended by removing the words ''coupons directly through wholesalers'' and adding in their place the word ''benefits'';

■ d. The second sentence in paragraph (k)(7) is revised; and

■ e. The first sentence in paragraph (l)(2) is amended by removing the words ''certified mail or personal service'' and adding in their place the words ''using any delivery method as long as the method provides evidence of delivery''.

The revision reads as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(k) * * *

(7) * * * The FNS officer in charge shall issue a notice to the firm (using any delivery method that provides evidence of delivery) to inform the firm of any authorization denial and advise the firm that it may request review of that determination.

* * * * *

■ 7. In § 278.2, the text of paragraph (g) is redesignated as paragraph (g)(1), and a new paragraph (g)(2) is added to read as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(g) * * *

(2) Notwithstanding paragraph (g)(1) of this section, authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households may be authorized to redeem EBT benefits directly through an insured financial institution in areas where an Electronic Benefit Transfer (EBT) system has been implemented.

* * * * *

§ 278.6 [Amended]

■ 8. In § 278.6, the first sentence in paragraph (o) is amended by removing the words ''certified mail or personal service'' and adding in their place the words ''any method that provides evidence of delivery''.

§ 278.7 [Amended]

■ 9. In § 278.7:

■ a. The first sentence in paragraph (b)(2) is amended by removing the words ''certified mail-return receipt requested'' and adding in their place the words ''using any delivery method as long as the method provides evidence of delivery'';

■ b. The first sentence in paragraph (f) is amended by removing the words ''certified mail or personal service'' and adding in their place the words ''using any delivery method as long as the method provides evidence of delivery''.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

§ 279.7 [Amended]

■ 10. In § 279.7, the last sentence in paragraph (b) is amended by removing the words ''registered or certified mail'' and adding in their place the words ''using any delivery method as long as the method provides evidence of delivery''.

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

■ 11. § 280.1 is amended by adding a sentence to the end of the section to read as follows:

§ 280.1 Interim disaster procedures.

* * * The Secretary may also approve alternate methods for issuing food stamp benefits during a disaster when reliance on Electronic Benefits Transfer (EBT) systems is impracticable.

Dated: November 23, 2005.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 05–23619 Filed 12–2–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV05–985–2 IFR A]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2005–2006 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends a prior interim final rule that increased the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year. The prior interim final rule increased the Scotch spearmint oil salable quantity from 677,409 pounds to 1,062,898 pounds, and the allotment percentage from 35 percent to 55 percent. In addition, the prior interim final rule increased the Native spearmint oil salable quantity from 867,958 pounds to 1,019,600 pounds, and the allotment percentage from 40 percent to 47 percent. This action does not affect the Scotch spearmint oil salable quantity and allotment percentage; however, it increases the Native spearmint oil salable quantity by an additional 151,855 pounds from 1,019,600 pounds to 1,171,455 pounds, and the allotment percentage by an additional 7 percent from 47 percent to 54 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2005, through May 31, 2006; comments received by February 3, 2006 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The initial salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005–2006 marketing year were recommended by the Committee at its October 6, 2004, meeting. The Committee recommended salable quantities of 677,409 pounds and 867,958 pounds, and allotment percentages of 35 percent and 40 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on January 12, 2005 (70 FR 2027). Comments on the proposed rule were solicited from interested persons until February 11, 2005. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005–2006 marketing year was published in the **Federal Register** on March 24, 2005 (70 FR 14969).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee has made recommendations to increase the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year, which ends on May 31, 2006. An interim final rule was published in the **Federal Register** on September 23, 2005 (70 FR 55713), which increased the 2005–2006 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 1,062,898 pounds and 55 percent, and 1,019,600 pounds and 47 percent, respectively. Comments on the interim final rule are being solicited from interested persons through November 22, 2005.

This rule amends the interim final rule that was published in the **Federal Register** on September 23, 2005, and is based on a unanimous Committee recommendation made at a meeting on October 5, 2005, to increase the Native spearmint oil salable quantity by an

additional 151,855 pounds from 1,019,600 pounds to 1,171,455 pounds and the allotment percentage by an additional 7 percent from 47 percent to 54 percent. The Committee did not make a recommendation to increase the Scotch spearmint oil salable quantity or allotment percentage by an additional amount at this time due to stable market conditions.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, this rule increases the 2005–2006 marketing year salable quantity and allotment percentage for Native spearmint oil to 1,171,455 pounds and 54 percent, respectively. The 2005–2006 marketing year salable quantity and allotment percentage for Scotch spearmint oil remains unchanged at 1,062,898 pounds and 55 percent, respectively.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The original total industry allotment base for Native spearmint oil for the 2005–2006 marketing year was established at 2,169,894 pounds and was revised at the beginning of the 2005–2006 marketing year to 2,169,362 pounds to reflect a 2004–2005 marketing year loss of 532 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,169,362 pounds is applied to the originally established allotment percentage of 40 percent, the initially established 2005–2006 marketing year salable quantity of 867,958 is effectively modified to 867,745 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, this allotment percentage increase allows each producer to take up to an amount equal to their allotment base from their Native oil reserve. This action makes an additional 80,766 pounds of Native spearmint oil available to the market. This figure is less than the salable quantity increase because not all producers have enough Native spearmint oil left in their reserves to take full advantage of this release. In addition, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after November 1 of each marketing year. Since this increase in the Native spearmint oil salable quantity is effective after November 1, 71,089 pounds of the 151,855 pound increase is not being made available.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(A) Estimated 2005–2006 Allotment Base—2,169,894 pounds. This is the estimate on which the original 2005–2006 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2005–2006 Allotment Base—2,169,362 pounds. This is 532 pounds less than the estimated allotment base of 2,169,894 pounds. This is less because some producers failed to produce all of their 2004–2005 allotment.

(C) Initial 2005–2006 Allotment Percentage—40 percent. This was recommended by the Committee on October 6, 2004.

(D) Initial 2005–2006 Salable Quantity—867,958. This figure is 40 percent of 2,169,894 pounds.

(E) Initial Adjustment to the 2005–2006 Salable Quantity—867,745 pounds. This figure reflects the salable quantity initially available after the beginning of the 2005–2006 marketing year due to the 532 pound reduction in the industry allotment base to 2,169,362 pounds.

(F) First Revision to the 2005–2006 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its August 24, 2005, meeting.

(2) 2005–2006 Allotment Percentage—47 percent. This figure is derived by adding the increase of 7 percent to the initial 2005–2006 allotment percentage of 40 percent.

(3) Calculated Revised 2005–2006 Salable Quantity—1,019,600 pounds. This figure is 47 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

(4) Computed Increase in the 2005–2006 Salable Quantity—151,855 pounds. This figure is 7 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

(G) Second (current) Revision to the 2005–2006 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its October 5, 2005, meeting.

(2) 2005–2006 Allotment Percentage—54 percent. This figure is derived by adding the increase of 7 percent to the initial 2005–2006 allotment percentage of 47 percent.

(3) Calculated Revised 2005–2006 Salable Quantity—1,171,455 pounds. This figure is 54 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

(4) Computed Increase in the 2005–2006 Salable Quantity—151,855 pounds. This figure is 7 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers who were not in attendance. The 2005–2006 marketing year began on June 1, 2005. Handlers have reported purchases and committed sales of 1,051,031 pounds of Native spearmint oil for the period of June 1, 2005, through October 5, 2005. This amount is 109 percent of the total sales for the five-year average of 962,377 pounds. Handlers estimated the total demand for the 2005–2006 marketing year could be between 1,100,000 pounds to 1,300,000 pounds. These amounts exceed the five-year average for an entire marketing year by 137,623 pounds to 337,623 pounds. Therefore, based on past history, the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2005–2006 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2005–2006 marketing year should be increased to 1,171,455 pounds and 54 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow for market needs and improve producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2005–2006 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume

regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2005–2006 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

As noted earlier, the Committee chose not to recommend an additional increase in Scotch spearmint oil at this time because of the stable market conditions. Handlers had reported purchases and committed sales of 792,382 pounds of Scotch spearmint oil for the period of June 1, 2005, through October 5, 2005. Handlers estimate that the total demand for the 2005–2006 marketing year could be between 800,000 pounds and 950,000 pounds. Therefore, the current salable quantity of 1,019,600 pounds should adequately supply the 2005–2006 marketing year.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 56 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 14 of the 56 Scotch spearmint oil producers and 18 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternative crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule amends an interim final rule that was published in the **Federal Register** on September 23, 2005, and is based on a unanimous Committee recommendation made at a meeting on October 5, 2005, to increase the Native spearmint oil salable quantity by an additional 151,855 pounds from 1,019,600 pounds to 1,171,455 pounds, and the allotment percentage by an additional 7 percent from 47 percent to 54 percent. The Committee did not make a recommendation to further increase the Scotch spearmint oil salable quantity or allotment percentage at this time due to stable market conditions.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended allotment percentages, upon which 2005–2006 producer allotments are based, are 55 percent for Scotch (a 20 percentage point increase from the original allotment percentage of 35 percent) and 54 percent for Native (a 14 percentage point increase from the original salable percentage of 40 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint oil. The econometric model estimated a $1.32 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used (*i.e.*, if the salable percentages were set at 100 percent).

Loosening the volume control restriction by increasing the allotment percentages resulted in this revised price decline estimate of $1.32 per pound if volume controls were not used. The initial price decline estimate of

$1.60 per pound was based on the 2005–2006 allotment percentages (35 percent for Scotch and 40 percent for Native) published in the **Federal Register** on March 24, 2005 (70 FR 14969). The 2004 Far West producer price for both classes of spearmint oil was $9.48 per pound.

The surplus situation for the spearmint oil market that would exist without volume controls in 2005–2006 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the October 5, 2005, meeting, the Committee considered alternatives to the recommended Native spearmint oil increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 0 percent to 10 percent. The Committee reached its recommendations to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate in Committee deliberations. Like all Committee meetings, the August 24, 2005, and October 5, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on modification of the 2005–2006 salable quantities and allotment percentages. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a further change to the salable quantity and allotment percentage for Native spearmint oil for the 2005–2006 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2006; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the marketing year, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.224, paragraph (b) is revised to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

§ 985.224 Salable quantities and allotment percentages—2005–2006 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,171,455 pounds and an allotment percentage of 54 percent.

Dated: November 11, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23620 Filed 12–2–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23144; Directorate Identifier 2005–NM–218–AD; Amendment 39–14393; AD 2005–24–13]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Learjet Model 45 airplanes. This AD requires modifying the electrical wire bundle for the alternator on the left-hand engine, inspecting for clearance between wire harnesses and engine tubing for each engine, and corrective actions if necessary. For certain airplanes, this AD also requires replacing the fuses for the hydraulic shutoff valves with fuses having higher amperage. This AD results from a report of a fire in the left-hand engine nacelle. We are issuing this AD to prevent chafing between the wire bundle for the alternator on each engine and the hydraulic lines, which could result in a fire in the engine nacelle.

DATES: This AD becomes effective December 20, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 20, 2005.

We must receive comments on this AD by February 3, 2006.

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

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

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

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report of a fire in the left-hand engine nacelle on a Learjet Model 45 airplane. Investigation revealed that an electrical wire bundle for the engine alternator had chafed a hole in a hydraulic line. This condition, if not corrected, could result in a fire in the engine nacelle.

Relevant Service Information

We have reviewed Bombardier Alert Service Bulletin SB A40–71–01, dated September 29, 2005 (for Learjet Model 45 airplanes with serial numbers (S/Ns) 45–2001 through 45–2029 inclusive); and Bombardier Alert Service Bulletin SB A45–71–4, dated September 29, 2005 (for Learjet Model 45 airplanes with S/Ns 45–005 through 45–273 inclusive). These service bulletins describe procedures for modifying the electrical wire bundle for the alternator on the left-hand engine to separate the wiring from the hydraulic pump lines and to protect the wiring; inspecting the left and right engines to make sure that the proper clearances are maintained between all wiring harnesses and engine tubing; and correcting improper clearances if necessary. The service bulletins also specify sending a compliance report to the manufacturer.

We have also reviewed Bombardier Service Bulletin SB 40–24–01, dated April 22, 2005 (for Learjet Model 45 airplanes with S/Ns 45–2001 through 45–2015 inclusive); and Bombardier Service Bulletin SB 45–24–6, dated April 22, 2005 (for Learjet Model 45 airplanes with serial numbers 45–005 through 45–254 inclusive). The actions in these service bulletins must be accomplished before or concurrently with Bombardier Alert Service Bulletins SB A40–71–01 and SB A45–71–4. Bombardier Service Bulletin SB 40–24–01 and SB 45–24–6 describe procedures for replacing the fuses for the hydraulic shutoff valves with fuses having higher amperage.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent chafing between the wire bundle for the alternator on each engine and the hydraulic lines, which could result in a fire in the engine nacelle. This AD requires accomplishing the actions specified in the applicable service information described previously, except as discussed under ''Difference Between the AD and Bombardier Alert Service Bulletins SB A40–71–01 and SB A45–71–4.''

Difference Between the AD and Bombardier Alert Service Bulletins SB A40–71–01 and SB A45–71–4

Although Bombardier Alert Service Bulletins SB A40–71–01 and SB A45–71–4 specify sending a compliance report to the manufacturer, this AD does not include that requirement.

Clarification of Inspection Terminology

In this AD, the ''inspecting for proper clearance'' specified in Bombardier Alert Service Bulletins SB A40–71–01 and SB A45–71–4, is referred to as a ''general visual inspection.'' We have included the definition for this inspection in a note in the AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–23144; Directorate Identifier 2005–NM–218–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of 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 Dockets

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.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–24–13 Learjet: Amendment 39–14393. Docket No. FAA–2005–23144; Directorate Identifier 2005–NM–218–AD.

Effective Date

(a) This AD becomes effective December 20, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 45 airplanes, certificated in any category; serial numbers (S/Ns) 45–005 through 45–273 inclusive, and 45–2001 through 45–2029 inclusive.

Unsafe Condition

(d) This AD results from a report of a fire in the left-hand engine nacelle. We are issuing this AD to prevent chafing between the wire bundle for the alternator on each engine and the hydraulic lines, which could result in a fire in the engine nacelle.

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.

Modification

(f) Within 50 flight hours after the effective date of this AD: Modify the electrical wire bundle for the alternator on the left-hand engine; and do a general visual inspection of the left and right engines to make sure that the proper clearances are maintained between all wiring harnesses and engine tubing. Correct improper clearances before further flight. Do all actions in accordance with the Accomplishment Instructions of the applicable service bulletin in paragraph (f)(1) or (f)(2) of this AD.

(1) For Learjet Model 45 airplanes with S/Ns 45–2001 through 45–2029 inclusive: Bombardier Alert Service Bulletin SB A40–71–01, dated September 29, 2005.

(2) For Learjet Model 45 airplanes with S/Ns 45–005 through 45–273 inclusive: Bombardier Alert Service Bulletin SB A45–71–4, dated September 29, 2005.

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

Concurrent Requirement

(g) For airplanes with S/Ns identified in paragraphs (g)(1) and (g)(2) of this AD: Before or concurrently with the modification required by paragraph (f) of this AD, replace the fuses for the hydraulic shutoff valves with fuses having higher amperage in accordance with the Accomplishment Instructions of the applicable service bulletin in paragraph (g)(1) or (g)(2) of this AD.

(1) For Learjet Model 45 airplanes with S/Ns 45–2001 through 45–2015 inclusive: Bombardier Service Bulletin SB 40–24–01, dated April 22, 2005.

(2) For Learjet Model 45 airplanes with S/Ns 45–005 through 45–254 inclusive: Bombardier Service Bulletin SB 45–24–6, dated April 22, 2005.

No Reporting Requirement

(h) Although Bombardier Alert Service Bulletin SB A40–71–01, dated September 29, 2005; and Bombardier Alert Service Bulletin SB A45–71–4, dated September 29, 2005; specify sending a compliance report to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Wichita Aircraft Certification Office (ACO), 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.

Material Incorporated by Reference

(j) You must use the service information listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Bombardier service bulletin	Date
Alert Service Bulletin SB A40–71–01.	September 29, 2005.
Alert Service Bulletin SB A45–71–4.	September 29, 2005.
Service Bulletin SB 40–24–01.	April 22, 2005.
Service Bulletin SB 45–24–6.	April 22, 2005.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23510 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–46–AD; Amendment 39–14392; AD 2005–24–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes

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

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, that requires an inspection of the thrust reverser cascades for correct installation; removing and reinstalling the cascade in the correct location, if necessary; and reworking the thrust reverser cascades to add locating spigots (metal protrusions) to each cascade; as applicable. This action is necessary to prevent asymmetric reverse thrust and consequent loss of control of the airplane during reverse thrust operation. This action is intended to address the identified unsafe condition.

DATES: Effective January 9, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 9, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli or James Delisio, Aerospace Engineers, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Bombardier Model CL–600–2C10 (Regional Jet Series 700, & 701) series airplanes was published in the **Federal Register** on May 19, 2004 (69 FR 28865). That action proposed to require an inspection of the thrust reverser cascades for correct installation; removing and reinstalling the cascade in the correct location, if necessary; and reworking the thrust reverser cascades to add locating spigots (metal protrusions) to each cascade; as applicable.

Comments

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

Request To Clarify Intent of Paragraph (b) of the Proposed AD

The commenter requests clarification on the inspection of the cascades upon the reinstallation of a cascade. The commenter wonders: ''In the event only one cascade is removed and reinstalled, does this paragraph require performance of the entire service bulletin ([Bombardier Alert Service Bulletin] A670BA–78–001) meaning both [engine] nacelles, on the corresponding nacelle, or for the individual cascade?'

We agree that clarification may be needed. We intended only for the corresponding nacelle or for the individual cascade to be inspected for correct installation when a cascade is removed and reinstalled. We have not changed the AD in this regard.

Request To Change the Applicability of Paragraph (b)

The commenter requests that the applicability of paragraph (b) of the proposed AD be changed since the applicability of paragraph (a) is limited to airplanes with serial numbers (S/N) 10005 through 10040. The commenter suggests revising paragraph (b) to be applicable only to cascades that have been removed and reinstalled.

We agree that the reasoning for the applicability of paragraph (b) of this AD needs to be clarified. However, we disagree that paragraph (b) needs to be revised. Airplanes with S/N 10005 through 10040 inclusive may have been delivered to customers with incorrectly installed cascades (before awareness of the incorrect cascade installation occurred). Airplanes with S/N 10003, 10004, and 10041 through 10116 were subject to a pre-delivery inspection to ensure that the airplanes were delivered with correctly configured cascades. However, those airplanes were delivered with cascades that could be mis-installed during maintenance actions. Airplanes with S/N 10117 and subsequent were delivered with cascades that were modified to help prevent mis-installation of the cascades. We have not changed the AD in this regard.

Request To Revise Cost Impact Statement

The commenter states that the cost impact statements do not reflect those in the referenced service bulletins. We infer that the commenter requests that the cost estimates be revised.

We partially agree to revise the cost impact statement. We erroneously stated the per nacelle cost to perform the modification as the per airplane cost. We have revised the statement to state the correct per airplane cost for the modification. However, we do not agree to revise the cost estimate for the inspection. We only include costs directly related to the required action. While the service bulletin includes an estimate on the cost to access and close-up the inspection area and other actions not directly a part of the inspection, we do not include those costs in our estimate. Those actions can be used in combination with other ADs, service bulletins, or maintenance actions that use the same access points.

Request To Delete Paragraph (e) of This AD

The commenter states that due to the amount of work hours involved in modifying the cascades, the applicability of paragraph (e) of the proposed AD should be modified to be limited only to cascades that have been removed and reinstalled or replaced per the inspection criteria in paragraph (b) of the proposed AD.

We do not agree to eliminate or modify paragraph (e) of this AD. The actions of paragraphs (b) and (e) of this AD are intended to differentiate between installation and reinstallation situations. For instance, a situation where an operator removes a cascade to gain access to an engine component may be considered a ''reinstallation'' situation, and the operator would be required to inspect the cascade installation to ensure that the removed cascade was reinstalled correctly. In that case, paragraph (b) would apply and the operator would not need to modify the cascade per paragraph (e). In contrast, if an operator was removing a cascade to do an action on it or to replace the cascade with another cascade, then the operator would be required to ensure that the cascade being installed has been modified in accordance with paragraph (e) and would not be permitted to only

inspect for proper installation. The modification in paragraph (e) is intended as a terminating action for the inspections required by this AD. We have not changed the AD in this regard.

Parts Availability

The commenter also states that spares are not readily available. The commenter adds that the lead time (order to delivery) for kits to modify the thrust reverser cascades is 10 to 12 weeks. We infer that the commenter wants the compliance time for the modified parts required in paragraph (e) of this AD to be extended.

We agree to extend the compliance time of paragraph (e) of this AD and have modified paragraph (e) to have a compliance time of 90 days after the effective date of this AD. We have evaluated the level of risk and have determined that extending the compliance time for paragraph (e) of this AD will not adversely affect safety. Should it be necessary, paragraph (g) of this AD provides operators the opportunity to request an additional extension of the compliance time if data (such as proof that parts have been ordered) are presented to justify such an extension.

Request To Revise Reference in Note 2

The commenter notes that the Bombardier service bulletin reference in Note 2 is missing a ''B'' from the service bulletin number.

We agree. We have changed the reference in Note 2 to correctly reference the Bombardier service bulletin.

Explanation of Change to Applicability

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

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.

Clarification of Previous Difference With the Canadian Airworthiness Directive

In the NPRM, we differed from the Canadian airworthiness directive available at that time (CF–2002–30, dated May 22, 2002) and proposed requiring the modification actions in paragraph (d) of this AD. We also noted that Transport Canada Civil Aviation (TCCA) was considering superseding their airworthiness directive to mandate the same actions we specified in paragraph (d). On June 22, 2004, the TCCA issued a revised Canadian airworthiness directive (CF–2002–30R1) that added a requirement for the modification that is the same as the actions of paragraph (d). We no longer differ from the Canadian airworthiness directive. We have revised Note 3 of this AD to refer to the revised Canadian airworthiness directive.

Conclusion

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

Cost Impact

The FAA estimates that 102 airplanes of U.S. registry will be affected by this AD. The average labor rate is $65 per work hour.

It will take approximately 1 work hour per airplane to accomplish the inspection. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $6,630, or $65 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the modification. Based on these figures, the cost impact of the rework on U.S. operators is estimated to be $39,780, or $390 per airplane.

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

Authority for This Rulemaking

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

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–24–12 Bombardier, Inc (Formerly Canadair): Amendment 39–14392. Docket No. 2003–NM–46–AD.

Applicability: Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10116 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetric reverse thrust and consequent loss of control of the airplane during reverse thrust operation, accomplish the following:

Inspection

(a) For airplanes with serial numbers 10005 through 10040 inclusive: Within 72 flight hours or 30 days from the effective date of the AD, whichever occurs first, perform a general visual inspection of the thrust reverser cascades for correct installation, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–78–001, Revision A, dated April 23, 2002.

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

Repetitive Inspections for Certain Airplanes

(b) For airplanes with serial numbers 10003 through 10116 inclusive: Each time the thrust reverser cascade is removed and reinstalled, perform the action specified in paragraph (a) of this AD.

Corrective Action

(c) If any thrust reverser cascade is found to be incorrectly installed during any inspection required by paragraph (a) or (b) of this AD, before further flight, remove and reinstall the cascade in the correct location, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–78–001, Revision A, dated April 23, 2002.

Terminating Action

(d) Within 6,000 flight hours from the effective date of the AD, rework the thrust reverser cascades by accomplishing all the actions in the Accomplishment Instructions of Bombardier Service Bulletin 670BA–78–003, dated January 22, 2004. Accomplishment of the rework terminates the requirements of paragraphs (a) and (b) of this AD.

Note 2: Bombardier Service Bulletin 670BA–78–003, references GE Aircraft Engines Service Bulletin 670GE–78–008, dated December 17, 2003, as an additional source of service information for the accomplishment of the rework.

Parts Installation

(e) Except as provided by paragraphs (b) and (c) of this AD, within 90 days after the effective date of this AD, no person may install on any airplane a thrust reverser cascade with powerplant system, serial numbers PS0003 through PS0116 inclusive, left- and right-hand, unless it has been reworked per Bombardier Service Bulletin 670BA–78–003, dated January 22, 2004.

Previous Actions

(f) Inspections accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A670BA–78–001, dated April 19, 2002, are considered acceptable for compliance with paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve AMOCs for this AD.

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

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions must be done in accordance with Bombardier Alert Service Bulletin A670BA–78–001, Revision A, dated April 23, 2002; and Bombardier Service Bulletin 670BA–78–003, dated January 22, 2004; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–30R1, dated June 22, 2004.

Effective Date

(i) This amendment becomes effective on January 9, 2006.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23511 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22033; Directorate Identifier 2004–NM–218–AD; Amendment 39–14391; AD 2005–24–11]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain EMBRAER Model EMB–135 and Model EMB–145 series airplanes. The existing AD currently requires repetitive inspections of the spring cartridges of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, and corrective action if necessary. The existing AD also provides for optional terminating action for the repetitive inspections for certain airplanes. This AD retains the requirements of the existing AD and adds a requirement for final terminating action for all affected airplanes. This AD results from reports of an improperly fitting lock washer causing the clevis of the spring cartridge in the electromechanical elevator gust lock system to become unscrewed. We are issuing this AD to prevent the unscrewing of the spring cartridge clevis from jamming the elevator, which could lead to reduced controllability of the airplane.

DATES: This AD becomes effective January 9, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 9, 2006.

On May 14, 2003 (68 FR 22585, April 29, 2003), the Director of the Federal Register approved the incorporation by reference of EMBRAER Service Bulletin 145–27–0098, dated December 9, 2002; and EMBRAER Service Bulletin 145LEG–27–0006, dated December 9, 2002.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street

SW., Nassif Building, room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2003–09–03, amendment 39–13132 (68 FR 22585, dated April 29, 2003). The existing AD applies to certain EMBRAER Model EMB–135 and –145 series airplanes. The proposed AD was published in the **Federal Register** on August 8, 2005 (70 FR 45590), to retain the requirements of AD 2003–09–03 and provide for final terminating action for all affected airplanes.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Credit for Using Revised Service Information

Since the NPRM was published, we have reviewed later revisions of EMBRAER Service Bulletins 145–27–0098 and 145LEG–27–0006, both dated December 9, 2002, which are referenced as the appropriate sources of service information for accomplishing the repetitive inspections specified in paragraphs (f) and (g) of the AD. The later revisions are EMBRAER Service Bulletin 145–27–0098, Change 01, dated June 3, 2003, and Revision 02, dated April 12, 2004; and EMBRAER Service Bulletin 145LEG–27–0006, Revision 01, dated June 3, 2003, and Revision 02, dated April 12, 2004. We have included the later revisions of those service bulletins in paragraphs (f) and (g) of this AD.

Explanation of Change to Affected ADs

Since the NPRM was published, a supplemental NPRM was issued for FAA rulemaking 2002–NM–89–AD. Therefore, we have revised paragraph (b)(2) of this AD to update the reference to FAA rulemaking 2002–NM–89–AD (70 FR 55310, September 21, 2005).

Explanation of Changes to Applicability

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

In the NPRM, we inadvertently excluded Model EMB–145XR, –145MP, and –145EP airplanes from paragraph (c), Applicability, of the proposed AD. However, since those airplanes were included with all other airplanes listed in the Preamble, Discussion and Requirements sections of the proposed AD, it was clear that we intended to include those airplanes in the proposed AD. Therefore, we have revised paragraph (c) of the AD to include Model EMB–145XR, –145MP, and –145EP airplanes.

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.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 380 airplanes of U.S. registry. The average labor rate is estimated to be $65 per work hour.

The inspections required by AD 2003–09–03 that are retained in this AD take about 1 work hour per airplane. Based on these figures, the estimated cost of the required inspections is $24,700, or $65 per airplane, per inspection cycle.

The new required actions take about 3 work hours per airplane. Required parts cost about $79 per cartridge (2 per airplane). Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $134,140, or $353 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–13132 (68 FR 22585, April 29, 2003), and adding the following new airworthiness directive (AD):

2005–24–11 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14391. Docket No. FAA–2005–22033; Directorate Identifier 2004–NM–218–AD.

Effective Date

(a) This AD becomes effective January 9, 2006.

Affected ADs

(b)(1) This AD supersedes AD 2003–09–03.

(2) Certain actions required by this AD are affected by FAA rulemaking 2002–NM–89–AD.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; having spring cartridges part number KPD2611 installed in the elevator gust lock system.

Unsafe Condition

(d) This AD results from reports of an improperly fitting lock washer causing the clevis of the spring cartridge in the electromechanical gust lock system to become unscrewed. We are issuing this AD to prevent the unscrewing of the spring cartridge clevis from jamming the elevator, which could lead to reduced controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 2003–09–03

Inspection

(f) For Model EMB–135BJ airplanes: Within 30 days after May 14, 2003 (the effective date of AD 2003–09–03), perform a general visual inspection of each spring cartridge of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, in accordance with EMBRAER Service Bulletin 145LEG–27–0006, dated December 9, 2002; Revision 01, dated June 3, 2003; or Revision 02, dated April 12, 2004. Before further flight, replace any discrepant spring cartridge with a new part having the same part number, in accordance with the service bulletin; or replace the spring cartridge, part number (P/N) KDP2611, with a new, improved spring cartridge, P/N KDP4235, as specified in paragraph (h) of this AD. After the effective date of this AD, only the replacement specified in paragraph (h) may be accomplished. Repeat the inspection at intervals not to exceed 800 flight hours until the replacement of the spring cartridge is accomplished as required by paragraph (h). Although the service bulletin recommends that operators report inspection results to EMBRAER, this AD does not require such a report.

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

(g) For airplanes not identified in paragraph (f) of this AD: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, perform a general visual inspection of each spring cartridge of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, in accordance with EMBRAER Service Bulletin 145–27–0098, dated December 9, 2002; Change 01, dated June 3, 2003; or Revision 02, dated April 12, 2004. Repeat the inspection at intervals not to exceed 800 flight hours after the initial inspection until the replacement of the spring cartridge, P/N KDP2611, with a new, improved spring cartridge, P/N KDP4235, is done as specified in paragraph (h) of this AD. Although the service bulletin recommends that operators report inspection results to EMBRAER, this AD does not require such a report.

(1) For airplanes equipped with an operational electromechanical gust lock system on the elevator: Inspect within 30 days after May 14, 2003, in accordance with PART I of the service bulletin. Before further flight, replace any discrepant spring cartridge with a new part having the same part number, in accordance with PART I of the service bulletin; or do the replacement specified in paragraph (h) of this AD. After the effective date of this AD, only the replacement specified in paragraph (h) may be accomplished.

(2) For airplanes that are not equipped with an operational electromechanical gust lock system on the elevator, but that are equipped with provisions for the system: Inspect within 60 days after May 14, 2003, in accordance with PART II of the service bulletin. Before further flight, replace any discrepant spring cartridge with a new part having the same part number, in accordance with PART II of the service bulletin; or do the replacement specified in paragraph (h) of this AD. After the effective date of this AD, only the replacement specified in paragraph (h) may be accomplished. Alternatively, removal of the spring cartridges terminates the repetitive inspection requirement of this AD during the time the cartridges are removed.

New Requirements of This AD

Replacement of Spring Cartridge

(h) Within 5,500 flight hours or 36 months after the effective date of this AD, whichever comes first, replace the spring cartridge, P/N KPD2611, with a new, improved spring cartridge, P/N KDP4235, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–27–0012, Revision 01, dated April 12, 2004 (for Model EMB–135BJ airplanes); or EMBRAER Service Bulletin 145–27–0102, Revision 02, dated January 20, 2005 (for Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); as applicable. Accomplishing this replacement terminates the repetitive inspections required by paragraphs (f) and (g) of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install a spring cartridge, P/N KPD2611, on any airplane.

Cartridge Replacement According to Previous Issue of Service Bulletin

(j) Spring cartridge replacements accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145LEG–27–0012, dated March 2, 2004; or EMBRAER Service Bulletin 145–27–0102, dated December 23, 2003, or Revision 01, dated April 12, 2004; are considered acceptable for compliance with the corresponding action required by this AD.

Alternative Methods of Compliance (AMOCs)

(k)(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.

(3) AMOCs approved previously according to AD 2003–09–03, amendment 39–13132, are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(l) Brazilian airworthiness directive 2003–01–03R1, dated July 26, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use the service bulletins specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

EMBRAER service bulletin	Issue level	Date
145–27–0098	Original	December 9, 2002.
145–27–0098	Change 01	June 3, 2003.
145–27–0098	Revision 02	April 12, 2004.
145–27–0102	Revision 02	January 20, 2005.
145LEG–27–0006	Original	December 9, 2002.
145LEG–27–0006	Revision 01	June 3, 2003.
145LEG–27–0006	Revision 02	April 12, 2004.
145LEG–27–0012	Revision 01	April 12, 2004.

(1) The Director of the Federal Register approved the incorporation by reference of the service documents listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. EMBRAER Service Bulletin 145LEG–27–0012, Revision 01, dated April 12, 2004, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2	01	April 12, 2004.
3–7	Original	March 2, 2004.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

EMBRAER service bulletin	Issue level	Date
145–27–0098	Change 01	June 3, 2003.
145–27–0098	Revision 02	April 12, 2004.
145–27–0102	Revision 02	January 20, 2005.
145LEG–27–0006	Revision 01	June 3, 2003.
145LEG–27–0006	Revision 02	April 12, 2004.
145LEG–27–0012	Revision 01	April 12, 2004.

(2) On May 14, 2003 (68 FR 22585, April 29, 2003), the Director of the Federal Register approved the incorporation by reference of EMBRAER Service Bulletin 145–27–0098, dated December 9, 2002; and EMBRAER Service Bulletin 145LEG–27–0006, dated December 9, 2002.

(3) Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23512 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22631; Directorate Identifier 2005–NM–183–AD; Amendment 39–14394; AD 2005–25–01]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This AD requires modifying electrical harnesses located at the left- and right-hand wing roots; and re-routing and modifying the harness of the right-hand outboard flap actuator. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent chafed electrical harnesses, which could result in a potential source of ignition for fuel vapors near a fuel tank and consequent fire or fuel tank explosion.

DATES: This AD becomes effective January 9, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 9, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this 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) 227–2474; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. That NPRM was published in the **Federal Register** on October 7, 2005 (70 FR 58626). That NPRM proposed to require modifying electrical harnesses located at the left- and right-hand wing roots; and re-routing and modifying the harness of the right-hand outboard flap actuator.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

This AD will affect about 112 airplanes of U.S. registry. The actions will take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $979 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $167,888, or $1,499 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–25–01 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–14394. Docket No. FAA–2005–22631; Directorate Identifier 2005–NM–183–AD.

Effective Date

(a) This AD becomes effective January 9, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT 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 electrical harnesses, which could result in a potential source of ignition for fuel vapors near a fuel tank and consequent fire or 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.

Corrective Action

(f) Within 5,000 flight hours after the effective date of this AD, modify the electrical harnesses located at the left- and right-hand wing roots; and re-route and modify the harness of the right-hand outboard flap actuator; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–24–0059, Revision 02, dated March 18, 2005.

Previously Accomplished Actions

(g) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 120–24–0059, dated April 6, 2004; and Revision 01, dated November 9, 2004; are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(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

(i) Brazilian airworthiness directive 2005–06–01, dated June 29, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 120–24–0059, Revision 02, dated March 18, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. EMBRAER Service Bulletin 120–24–0059, Revision 02, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3	02	March 18, 2005.
2, 17, 18	01	Nov. 9, 2004.
4–16, 19–21	Original ..	April 6, 2004.

The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23555 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22454; Directorate Identifier 2001–NM–108–AD; Amendment 39–14395; AD 2005–25–02]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 airplanes. That AD currently requires inspections to determine the proper installation of rivets in certain key holes and to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. The existing AD also requires various inspections of the subject area for discrepancies, and corrective actions if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, the existing AD also requires replacement of friction plates, stop fittings, and bolts with new parts. This new AD requires additional corrective actions for certain airplanes. This AD results from discovery of cracks around key holes on certain fuselage frames where rivets were missing. We are issuing this AD to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective January 9, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 9, 2006.

On April 26, 2000 (65 FR 15226, March 22, 2000), the Director of the Federal Register approved the incorporation by reference of certain other publications.

On November 18, 1993 (58 FR 53853, October 19, 1993), the Director of the Federal Register approved the incorporation by reference of a certain publication.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2000–05–26, amendment 39–11636 (65 FR 15226, March 22, 2000). The existing AD applies to all ATR42–200, ATR42–300 and ATR42–320 airplanes. That NPRM was published in the **Federal Register** on September 19, 2005 (70 FR 54856). That NPRM proposed to continue to require inspections to determine the proper installation of rivets in certain key holes and to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. That NPRM also proposed to continue to require various inspections of the subject area for discrepancies, and corrective actions if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, that NPRM proposed to continue to require replacement of friction plates, stop fittings, and bolts with new parts. That NPRM further proposed to require additional corrective actions for certain airplanes.

Comments

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

Clarification of Effective Date

We have revised Note 2 of this AD to include the effective date of AD 2000–05–26.

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.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 106 Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 airplanes of U.S. registry.

The general visual inspection of fuselage frames 25 and 27 that is required by AD 2000–05–26 and

retained in this AD takes about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of that currently required action is $195 per airplane.

The cargo door hinge and skin replacement that is required by AD 2000–05–26 and retained in this AD takes about 250 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost approximately $9,880 per airplane. Based on these figures, the estimated cost of the currently required action is $26,130 per airplane.

The general visual inspection of the key and tooling holes that is required by AD 2000–05–26 takes about 100 work hours per airplane, at an average rate of $65 per work hour. Based on these figures, the estimated cost of that currently required action is $6,500 per airplane.

The eddy current and detailed visual inspections of the forward entry door stop fitting and friction plate that are required by AD 2000–05–26 take about 2 work hours per airplane, at an average rate of $65 per work hour. Based on these figures, the estimated cost of those currently required actions is $130 per airplane.

The replacement of the forward entry door stop fitting, friction plate, and upper door corner that is required by AD 2000–05–26 takes about 50 work hours per airplane, at an average rate of $65 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this AD. Based on these figures, the estimated cost of that currently required action is $3,250 per airplane.

The new actions required by this AD will take about 250 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $9,880 per airplane. Based on these figures, the estimated cost of the new actions required by this AD is $26,130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–11636 (65 FR 15226, March 22, 2000) and adding the following new airworthiness directive (AD):

2005–25–02 Aerospatiale: Amendment 39–14395. Docket No. FAA–2005–22454; Directorate Identifier 2001–NM–108–AD.

Effective Date

(a) This AD becomes effective January 9, 2006.

Affected ADs

(b) This AD supersedes AD 2000–05–26.

Applicability

(c) This AD applies to all Aerospatiale Model ATR42–200, ATR42–300, and ATR–320 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from discovery of cracks around key holes on certain fuselage frames where rivets were missing. We are issuing this AD to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity 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 the Requirements of AD 2000–05–26

Frame 25 and 27 Inspection

(f) For airplanes having serial numbers 005 through 016 inclusive, 018 through 030 inclusive, 032 through 036 inclusive, 038, 040, 042, 043, 048 through 062 inclusive, 064 through 090 inclusive, 092 through 094 inclusive, and 096 through 228 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after April 26, 2000, (the effective date of AD 2000–05–26) whichever occurs later, conduct a general visual inspection of fuselage frames 25 and 27 to verify the proper installation of a rivet in each of the key holes, in accordance with Avions de Transport Regionale (ATR) Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993; or Revision 3, dated February 19, 1999.

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

Note 2: Inspection of fuselage frames 25 and 27 accomplished prior to April 26, 2000, in accordance with ATR Service Bulletin ATR42–53–0070, dated June 10, 1991; or Revision 1, dated June 12, 1992; is considered acceptable for compliance with the requirements of paragraph (f) of this AD.

(1) If a rivet is installed in each of the key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the key holes, prior to further flight, perform an eddy current inspection of each open key hole to detect cracks, in accordance with the service bulletin.

(i) If no crack is found during the eddy current inspection, prior to further flight, install a rivet in the open key hole in accordance with the service bulletin. After such installation, no further action is required by this paragraph for that key hole.

(ii) If any crack is found during the eddy current inspection, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Inspection and Modification of Cargo Door Structure

(g) For airplanes equipped with a cargo compartment door on which Aerospatiale Modification 3191 has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 180 days after April 26, 2000, whichever occurs later, except as provided by paragraph (h) of this AD, replace the hinges on the cargo compartment door and fuselage (including inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable) with new improved hinges, in accordance with paragraph 2. of the Accomplishment Instructions of ATR Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995; or ATR42–52–0058, Revision 2, dated June 22, 2000.

(h) Where the instructions in ATR Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995; or ATR42–52–0058, Revision 2, dated June 22, 2000, specify that ATR is to be contacted for a repair, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Frame Inspection

(i) For airplanes having serial numbers 003 through 208 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after April 26, 2000, whichever occurs later, conduct a general visual inspection of the identified fuselage frames for proper installation of a rivet in each of the tooling and key holes, in accordance with ATR Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996; or Revision 3, dated February 19, 1999.

(1) If a rivet is installed in each of the tooling or key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the tooling and key holes, prior to further flight, perform a detailed inspection of each open tooling or key hole to detect cracks, in accordance with the service bulletin.

Note 3: 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.''

(i) If no crack is found during the detailed inspection required by paragraph (i)(2) of this AD, prior to further flight, install a rivet in the open hole in accordance with the service bulletin.

(ii) If any crack is found during the inspection required by paragraph (i)(2) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Inspection and/or Replacement of Entry Door Structure

(j) For Model ATR42–300 airplanes having serial numbers listed in ATR Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993: Except as provided by paragraph (f) of this AD, prior to the accumulation of 10,000 total flight cycles, or within 90 days after April 26, 2000, whichever occurs later, accomplish the requirements of paragraphs (j)(1) and (j)(2) of this AD.

(1) Perform an eddy current inspection of the forward entry door stop holes to detect cracking, in accordance with the service bulletin. If any cracking is detected, prior to further flight, replace any cracked forward entry door stop fitting with a new fitting, in accordance with the service bulletin.

(2) Perform a detailed inspection of the forward entry door friction plates for wear, in accordance with the service bulletin. If wear is found on any friction plate, and the wear has a depth equal to or greater than 0.8mm (0.0315 in.), prior to further flight, replace the friction plate with a new or serviceable part in accordance with the service bulletin.

(k) For Model ATR42–300 airplanes listed in ATR Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993, accomplishment of the requirements of paragraph (l) of this AD at the time specified in paragraph (j) of this AD constitutes terminating action for the requirements of paragraph (j) of this AD.

(l) For Model ATR42–300 airplanes listed in ATR Service Bulletin ATR42–52–0059, dated February 16, 1995: Prior to the accumulation of 18,000 total flight cycles, or within 180 days after April 26, 2000, whichever occurs later, accomplish the requirements of paragraphs (l)(1), (l)(2), and (l)(3) of this AD in accordance with the service bulletin.

(1) Replace the forward entry door friction plates with improved friction plates.

(2) Replace the upper corners of the forward entry door surround structure with improved door surround corners.

(3) Replace the forward entry door stop fittings and bolts with improved fittings and bolts.

New Requirements of This AD

Replacing Hinges on the Cargo Compartment Door and Fuselage

(m) For airplanes identified as having main serial numbers (MSNs) 317, 319, 321, 323, 325, 327, 329 through 335 inclusive, 360, and 368, that are equipped with a cargo compartment door on which Aerospatiale Modification 3191 has not been accomplished: Prior to the accumulation of 27,000 total flight hours, or within 180 days after the effective date of this AD, whichever occurs later, replace the hinges on the cargo compartment door and fuselage (including inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable) with new improved hinges, in accordance with the Accomplishment Instructions of Avions de Transport Regional (ATR) Service Bulletin ATR42–52–0058, Revision 2, dated June 22, 2000.

(n) Where the instructions in ATR Service Bulletin ATR42–52–0058, Revision 2, dated June 22, 2000, specify that ATR is to be contacted for a repair, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM–116, 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

(p) French airworthiness directive 2000–337–079(B), dated July 26, 2000, also addresses the subject of this AD.

Material Incorporated by Reference

(q) You must use the service bulletins listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Avions de Transport regional service bulletin	Revision level	Date
ATR42–52–0052	1	March 2, 1993.
ATR42–52–0058	1	March 1, 1995.
ATR42–52–0058	2	June 22, 2000.
ATR42–52–0059	Original	February 16, 1995.
ATR42–53–0070	2	March 22, 1993.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE—Continued

Avions de Transport regional service bulletin	Revision level	Date
ATR42–53–0070	3	February 19, 1999.
ATR42–53–0076	2	October 15, 1996.
ATR42–53–0076	3	February 19, 1999.

(1) The Director of the Federal Register approved the incorporation by reference of Avions de Transport Regional Service Bulletin ATR42–52–0058, Revision 2, dated June 22, 2000, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 26, 2000 (65 FR 15226, March 22, 2000), the Director of the Federal Register approved the incorporation by reference of the Avions de Transport Regionale service information as listed in Table 2 of this AD.

TABLE 2.—PREVIOUS MATERIAL INCORPORATED BY REFERENCE

Avions de Transport regionale service bulletin	Revision level	Date
ATR42–52–0052	1	March 2, 1993.
ATR42–52–0058	1	March 1, 1995.
ATR42–52–0059	Original	February 16, 1995.
ATR42–53–0070	3	February 19, 1999.
ATR42–53–0076	2	October 15, 1996.
ATR42–53–0076	3	February 19, 1999.

(3) On November 18, 1993, (58 FR 53853, October 19, 1993), the Director of the Federal Register approved the incorporation by reference of Avions de Transport Regionale Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993.

(4) Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23556 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21256; Airspace Docket No. 05–AGL–04]

Establishment of Class D Airspace; Eau Claire, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which establishes Class D airspace at Eau Claire, WI.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7131, or David Sapadin (847) 294–7477.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 6, 2005 (70 FR 52903). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on that date.

Issued in Des Plaines, Illinois, on November 1, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–23633 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2005–20417; Airspace Docket No. 05–ANM–06]

Amendment to Class E Airspace; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise the Class E airspace area at Wenatchee, WA. Additional Class E airspace is necessary to accommodate aircraft using a new Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) at Wenatchee/Pangborn Memorial Memorial Airport. This change is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing the new SIAP at Wenatchee/Pangborn Memorial Airport, Wenatchee, WA.

EFFECTIVE DATE: 0901 UTC, January 19, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 25, 2005, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) by revising Class E airspace at Wenatchee, WA (70 FR 20093). The proposed action

would provide additional controlled airspace to accommodate the new ILS SIAP at Wenatchee/Pangborn Memorial Airport, Wenatchee, WA. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Wenatchee, WA, by providing additional controlled airspace for aircraft executing the new ILS SIAP at the Wenatchee/Pangborn Memorial Airport. This additional controlled airspace extending upward from 700 feet or more above the surface is necessary for the containment and safety of IFR aircraft executing this SIAP and transitioning to/from the en route environment.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are ncessary to keep the regulations current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WA E5 Wenatchee, WA [Revised]

Wenatchee/Pangborn Municipal Airport, WA
(Lat. 47°23′56″ N., long. 120°12′24″ W.)
Wenatchee VOR/DME
(Lat. 47°23′59″ N., long. 120°12′39″ W.)

That airspace extending upward from 700 feet above the surface within 4.3 miles south and 9.5 miles north of the 299° radial from the Wenatchee VOR/DME to 17 miles northwest of the VOR/DME, and within 4.3 miles southwest and 8 miles northeast of the 124° radial from the VOR/DME to 21 miles southeast of the VOR/DME, excluding that portion within the Moses Lake, Grant County, and Quincy Airport, WA, Class E airspace areas; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at: Lat. 47°36′00″ N., long. 120°43′00″ W.; to lat. 47°36′00″ N., long. 119°39′30″ W.; to lat. 47°07′00″ N., long. 119°39′30″ W.; to lat. 47°07′00″ N., long. 120°43′00″ W.; to the point of beginning. Excluding that portion within the Moses Lake, Grant County Airport, WA, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on November 10, 2005.

Raul C. Treviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–23634 Filed 12–2–05; 8:45am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 239

[Release Nos. 33–8518A; 34–50905A; File No. S7–21–04]

Asset-Backed Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: This document contains corrections to final rules which were published in the **Federal Register** on Friday, January 7, 2005 (70 FR 1506). The rules relate to the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 and the Securities Exchange Act of 1934.

DATES: *Effective Date:* December 5, 2005. The Compliance Dates are the same as in Release No. 33–8518.

FOR FURTHER INFORMATION CONTACT: Katherine W. Hsu, Special Counsel, Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On December 22, 2004, the Commission adopted changes to address comprehensively the registration, disclosure, and reporting requirements for asset-backed securities under the Securities Act of 1933 (''Securities Act'') and the Securities Exchange Act of 1934.[1] Items 1100 and 1105 [2] of Regulation AB [3] and General Instruction I.B. to Form S–3 [4] under the Securities Act in the final regulations, as published, contain errors that need correction. We are also correcting language in paragraph 4 of the certification for asset-backed issuers required by paragraph (b)(31)(ii) of Item 601 [5] of Regulation S–K [6] to conform to the corresponding provisions in Item 1123 [7] of Regulation AB.

Text of Amendments

List of Subjects in 17 CFR Parts 229 and 239

Reporting and recordkeeping requirements, Securities.

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

[1] See Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506].

[2] 17 CFR 229.1100 and 17 CFR 229.1105.

[3] 17 CFR 229.1100 *et seq.*

[4] 17 CFR 239.13.

[5] 17 CFR 229.601.

[6] 17 CFR 229.10 *et seq.*

[7] 17 CFR 229.1123.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

§ 229.601 [Amended]

■ 2. Section 229.601 is amended by adding the phrase ''in all material respects'' after the words ''servicing agreement(s)'' in both places that those words appear in paragraph (4) of the Certifications section that follows the introductory language in paragraph (b)(31)(ii).

§ 229.1100 [Amended]

■ 3. Section 229.1100 is amended by revising the heading to the instruction to paragraph (c)(2) that reads ''*Instruction to Item 1101(c)(2)*'' to read ''*Instruction to Item 1100(c)(2)*''.

§ 229.1105 [Amended]

■ 4. Section 229.1105 is amended by revising the phrase ''weighted average initial pool balance'' in the second sentence of paragraph (a)(3)(iii) to read ''weighted average initial loan balance''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 5. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

■ 6. Form S–3 is amended by revising paragraph (b) of General Instruction I.B.5. to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

B. Transaction Requirements * * *

5. Offerings of Investment Grade Asset-Backed Securities

(a) * * *

(b) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (a) of this General Instruction I.B.5 where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 230.190(c)(1) through (4)).

* * * * *

Dated: November 29, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23614 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

[Docket No.: 040305083–5249–03]

RIN 0625–AA64

Steel Import Monitoring and Analysis System

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce publishes this action to make final an interim final rule that extended and expanded the Steel Import Monitoring and Analysis (SIMA) system until March 21, 2009. This action also expands the list of covered items to include all basic steel mill products, but it also removes certain downstream steel products, which were formerly covered products (certain fittings and flanges, certain cold formed shapes, and certain bars). The purpose of the SIMA system is to provide statistical data on steel imports entering the United States seven weeks earlier than is otherwise publicly available. The data collected on the licenses are made available to the public in an aggregated form weekly after Commerce review.

DATES: This final rule is effective December 5, 2005.

FOR FURTHER INFORMATION CONTACT: For information on the SIMA system, please contact Kelly Parkhill (202) 482–3791; Julie Al-Saadawi (202) 482–1930.

SUPPLEMENTARY INFORMATION: The SIMA system (formerly referred to as Steel Monitoring and Analysis system) was originally outlined in the President's March 5, 2002, Proclamation about Steel Safeguards, which also placed tariffs temporarily on many steel imports and provided the steel industry time to restructure. The monitoring system outlined in the President's Proclamation required all importers of steel products to obtain a license from the Department of Commerce prior to completing their Customs import summary documentation. The original intent was to provide a monitoring tool to ensure that the effectiveness of the safeguard was not undermined by large quantities of imports originating from countries that were excluded from the tariffs. On December 4, 2003, the President issued a proclamation that terminated the steel safeguard measures, but directed the Secretary of Commerce to continue the monitoring system until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program. On December 9, 2003, the Department of Commerce published a notice stating that the system would continue in effect as described in the Proclamation until March 21, 2005 (68 FR 68594).

On August 25, 2004, the Department published an advanced notice of proposed rulemaking soliciting comments from the public on whether to continue the monitoring system beyond March 21, 2005 (69 FR 52211) and, if extended, whether the system should be modified in any way. The Department received a number of submissions from a wide range of interested parties, including steel producers, steel consumers, steel suppliers, and importers as well as Congressional and foreign interests. On March 11, 2005, the Department published an interim final rule responding to these comments from the public and implementing a slightly expanded version of SIMA until March 21, 2009. The Department received forty-two submissions from a wide range of interested parties. Please refer to the SIMA system's Web site to read the comments on the Interim Rule and for further information about the SIMA system: *http://ia.ita.doc.gov/steel/license/.*

Final Rule

The purpose of the SIMA system is to collect timely detailed statistics on steel imports and to provide stakeholders with information about import trends in this sector. The SIMA system aggregates detailed import statistics it collects from internet-generated licenses and makes the data available for public analysis on a weekly basis. The data gathering

procedure through the online licensing system remains the same as it was described in the interim final rule. While the import monitor will continue to display aggregate statistical tables and graphs of U.S. steel imports combining data from the Census Bureau with data collected from the licensing system, it will be altered somewhat in response to comments received. However, these modifications do not require regulatory action and have no impact on the interim regulations, which will be finalized without changes.

As stated in the interim final rule, the Department extended the SIMA system for a period of four years beginning March 21, 2005 (see 19 CFR 360). The Department has also expanded the coverage of the system to include all basic steel mill products and will release aggregate licensing data at the 6-digit Harmonized Tariff Schedule (HTS) product level detail on the monitoring Web site.

In response to a number of comments received, the Department plans to make some changes in the monitoring section. The Department intends to add certain downstream steel products, identified during the comment period. These additional products will be available on the SIMA import monitoring Web site and will cover publicly available data only. The Department also intends to include export data and possibly domestic shipment data, which would provide an indicator of apparent consumption of steel in the United States. In addition, the Department plans to provide import data broken out by carbon, alloy, and stainless grades.

Comments

Submissions received during the public comment period established in the interim final rule have been considered in preparing this final rule. Forty-two submissions were received from a wide range of sources: members of Congress, consumers, producers, and importers. Nearly all of the comments were supportive of extension and expansion of the SIMA system to steel mill products and agreed that it is a critical tool that helps the industry to closely monitor steel imports. The comments are summarized below and listed in order of their frequency:

Comment 1: Expansion of the SIMA system to include various downstream steel products—The majority of the submitted comments supported expansion of the SIMA system to include downstream steel products, particularly downstream steel wire products such as steel wire strand and rope and cables (HTS 7312), barbed wire (HTS 7313), steel wire cloth, grill, netting, and fencing (HTS 7314), steel wire nails and staples (HTS 7317), steel springs (HTS 7320), and steel wire garment hangers (HTS 7326.20.0020). A small number of commenters stated that butt-weld fittings and flanges should be covered in the new SIMA system and that the Department should provide import data broken out by carbon, alloy, and stainless grades.

Response 1: The Department will not expand coverage of the SIMA system to require licensing for the requested downstream steel products. Although the Department recognizes that certain segments of the steel industry are interested in the Department's licensing and monitoring of these downstream steel products, the sheer volume of entries associated with many of these downstream steel products (nails and staples, springs, fittings and flanges and wire hangers) greatly increases the burden of the system on the trading community and could potentially overwhelm the SIMA system. However, in response to the comments received, the Department intends to include publicly available import data for these products in a separate section of the SIMA monitoring system. The Department also intends to provide import data broken out by carbon, alloy, and stainless steel grades.

Comment 2: Additional Data on Steel Exports and Shipments—The Department received a comment in one of the early comment periods that requests the Department to provide statistics on steel availability. The commenter wants to see shipment data and export data in addition to imports. By including all three concepts, the commenter argues, the SIMA system would paint a better picture of the available steel supply in the U.S. than relying only on imports.

Response 2: In addition to import data, the Department intends to provide certain publicly available steel export data in the SIMA monitoring system. The Department is also exploring the possibility of reporting domestic shipment data to provide an indicator of U.S. apparent consumption. These changes to the SIMA system do not involve regulatory changes and do not affect the interim regulations.

Comment 3: Reporting Level—A number of the submissions requested that the level of product detail presented in the monitor should be at the 10-digit HTS level. The commenters voiced concerns over reporting at the 6-digit HTS level stating that the product's features and use are often not revealed at the 6-digit HTS levels. Several commenters also suggested that the Department should aggregate data by port of entry.

Response 3: The Department will continue to report aggregate data at the 6-digit HTS level only. The Department does not intend to publish data in any greater product detail than at the 6-digit HTS level because of the possibility of inadvertent release of proprietary information. The Department does not intend to release aggregate port of entry data for the same reason. However, the Department will publish historical percentage allocations for 6-digit HTS codes to the aggregate steel categories to assist users in their analysis of the data.

Comment 4: Foreign Trade Zones (FTZ)–A number of commenters requested that the steel licensing requirement should remain a requirement at the time of admission to a FTZ and not upon Customs entry into the U.S. Customs territory.

Response 4: The Department will continue to require a license from importers who bring steel to an FTZ only when it is first entered into the FTZ. The Department acknowledges the difficulty of identifying specific steel components upon exit of the steel product from the FTZ into the U.S. economy.

Comment 5: Blanket License—A few commenters stated that the current system should allow blanket licenses.

Response 5: The Department does not intend to make blanket licenses available. The Department is pleased to report that the data collected from the licensing system matches closely the Census data when it is published several weeks after the SIMA release. If the Department were to allow users to file blanket licenses, it would be difficult to reconcile other data with the licensing data and the accuracy of the monitoring system would deteriorate.

Comment 6: Text file of raw data—A number of commenters requested that the Department release data in a text format that includes both quantity and value data.

Response 6: The Department intends to publish a 6-column text file on its Web site and update it weekly. This text file would be composed of country, HTS code, quantity, value, price, and month of importation.

On June 9, 2005, the product coverage of the SIMA system expanded to include all basic steel mill products (which are listed in full in the annex). At the same time certain downstream steel products, which were formerly covered products (certain fittings and flanges, certain cold formed shapes, and certain bars) were removed from the licensing requirement. Please refer to the SIMA Web site for a full listing of

the detailed product code changes and requirements.

For the reasons discussed above, the interim rule (19 CFR 360) published on March 11, 2005 (70 FR 12133) is finalized without changes.

Classification

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in EO 13132.

Regulatory Flexibility Act

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB (OMB No.: 0625–0245; Expiration Date: 06/30/2008). Public reporting for this collection of information is estimated to be less than 10 minutes per response, including the time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be provided confidentially to the extent allowed by law.

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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: November 28, 2005.

Peter Lichtenbaum,

Acting Deputy Under Secretary for International Trade.

Annex: SIMA System Product Coverage—Basic Steel Mill Products. Harmonized Tariff System (HTS) Codes Listed Below

Ingots and Steel for Castings

7206100000, 7206900000, 7218100000, 7224100005, 7224100075

Blooms, Billets and Slabs

7207110000, 7207120010, 7207120050, 7207190030, 7207190090, 7207200025, 7207200045, 7207200075, 7207200090, 7218910015, 7218910030, 7218910060, 7218990015, 7218990030, 7218990045, 7218990060, 7218990090, 7224900005, 7224900045, 7224900055, 7224900065, 7224900075

Wire Rods

7213913000, 7213913010, 7213913011, 7213913015, 7213913090, 7213913091, 7213913092, 7213914500, 7213914510, 7213914590, 7213916000, 7213916010, 7213916090, 7213990030, 7213990031, 7213990038, 7213990090, 7221000015, 7221000030

Structural Shapes Heavy

7216310000, 7216320000, 7216330030, 7216330060, 7216330090, 7216400010, 7216400050, 7216500000, 7216990000, 7216990010, 7216990090, 7222403025, 7222403045, 7228703020, 7228703040

Steel Piling

7301100000

Plates Cut Lengths

7208403030, 7208403060, 7208510030, 7208510045, 7208510060, 7208520000, 7210901000, 7211130000, 7211140030, 7211140045, 7219210005, 7219210020, 7219210040, 7219210050, 7219210060, 7219220005, 7219220010, 7219220015, 7219220020, 7219220025, 7219220030, 7219220035, 7219220040, 7219220045, 7219220060, 7219220070, 7219220075, 7219220080, 7219310050, 7220110000, 7225403005, 7225403050, 7225506000, 7226915000

Plates in Coils

7208101500, 7208103000, 7208253000, 7208256000, 7208360030, 7208360060, 7208370030, 7208370060, 7211140090, 7219110000, 7219110030, 7219110060, 7219120002, 7219120006, 7219120021, 7219120026, 7219120045, 7219120051, 7219120056, 7219120066, 7219120071, 7219120081, 7219310010, 7225303005, 7225303050

Rails Standard

7302101010, 7302101035, 7302105020

Rails All Other

7302101015, 7302101025, 7302101045, 7302101055

Railroad Accessories

7302200000, 7302400000, 7302901000

Bars—Hot Rolled

7213200000, 7213200010, 7213200080, 7213990060, 7214100000, 7214300000, 7214300010, 7214300080, 7214910015, 7214910060, 7214910090, 7214990015, 7214990030, 7214990045, 7214990060, 7214990075, 7214990090, 7215901000, 7221000005, 7221000045, 7221000075, 7222110005, 7222110050, 7222190005, 7222190050, 7227200000, 7227200010, 7227200020, 7227200090, 7227200095, 7227906005, 7227906050, 7227906051, 7227906053, 7227906058, 7227906059, 7228201000, 7228308005, 7228308050, 7228400000, 7228606000, 7228800000, 7228703010, 7228703041, 7228703081

Bars—Light Shapes

7216100010, 7216100050, 7216210000, 7216220000, 7222403065, 7222403085, 7228703060, 7228703080

Bars—Reinforcing

7213100000, 7214200000

Bars—Cold Finished

7215100000, 7215100010, 7215100080, 7215500015, 7215500060, 7215500090, 7215903000, 7215905000, 7222200005, 7222200045, 7222200075, 7222300000, 7228205000, 7228505005, 7228505050, 7228608000

Tool Steel

7224100045, 7224900015, 7224900025, 7224900035, 7225200000, 7225301000, 7225305030, 7225305060, 7225401015, 7225401090, 7225405030, 7225405060, 7225501030, 7225501060, 7226200000, 7226910500, 7226911530, 7226911560, 7226912530, 7226912560, 7226921030, 7226921060, 7226923030, 7226923060, 7227100000, 7227901030, 7227901060, 7227902030, 7227902060, 7228100010, 7228100030, 7228100060, 7228302000, 7228304000, 7228306000, 7228501010, 7228501020, 7228501040, 7228501060, 7228501080, 7228601030, 7228601060, 7229100000

Standard Pipe

7304390016, 7304390020, 7304390024, 7304390036, 7304390048, 7304390062, 7304390076, 7304390080, 7304598010, 7304598015, 7304598030, 7304598045, 7304598060, 7304598080, 7306305025, 7306305028, 7306305032, 7306305040, 7306305055, 7306305085, 7306305090

Oil Country Goods

7304213000, 7304216030, 7304216045, 7304216060, 7304291010, 7304291020, 7304291030, 7304291040, 7304291050, 7304291060, 7304291080, 7304292010, 7304292020, 7304292030, 7304292040, 7304292050, 7304292060, 7304292080, 7304293010, 7304293020, 7304293030, 7304293040, 7304293050, 7304293060, 7304293080, 7304294010, 7304294020, 7304294030, 7304294040, 7304294050, 7304294060, 7304294080, 7304295015, 7304295030, 7304295045, 7304295060, 7304295075, 7304296015, 7304296030, 7304296045, 7304296060, 7304296075, 7305202000, 7305204000, 7305206000, 7305208000, 7306201030, 7306201090, 7306202000, 7306203000, 7306204000, 7306206010, 7306206050, 7306208010, 7306208050

Line Pipe

7304101020, 7304101030, 7304101045, 7304101060, 7304101080, 7304105020, 7304105050, 7304105080, 7305111030, 7305111060, 7305115000, 7305121030, 7305121060, 7305125000, 7305191030, 7305191060, 7305195000, 7306101010, 7306101013, 7306101014, 7306101015, 7306101019, 7306101050, 7306101053, 7306101054, 7306101055, 7306101059, 7306105010, 7306105013, 7306105014, 7306105015, 7306105019, 7306105050, 7306105053, 7306105054, 7306105055, 7306105059

Mechanical Tubing

7304313000, 7304316050, 7304390028, 7304390032, 7304390040, 7304390044, 7304390052, 7304390056, 7304390068, 7304390072, 7304511000, 7304515060, 7304591000, 7304596000, 7304598020, 7304598025, 7304598035, 7304598040, 7304598050, 7304598055, 7304598065, 7304598070, 7304905000, 7304907000, 7306301000, 7306305015, 7306305020, 7306305035, 7306501000, 7306505030, 7306505050, 7306505070, 7306605000, 7306607060

Pressure Tubing

7304316010, 7304390002, 7304390004, 7304390006, 7304390008, 7304515015, 7304515045, 7304592030, 7304592040, 7304592045, 7304592055, 7304592060, 7304592070, 7304592080, 7306305010, 7306505010

Stainless Pipe & Tubing

7304413005, 7304413015, 7304413045, 7304416005,7304416015, 7304416045, 7304490005, 7304490015, 7304490045, 7304490060, 7306401010, 7306401015, 7306401090, 7306405005, 7306405015, 7306405040, 7306405042, 7306405044, 7306405062, 7306405064, 7306405080, 7306405085, 7306405090, 7306607030

Pipe & Tubing Nonclassified

7304515005, 7305901000, 7305905000, 7306901000, 7306905000

Structural Pipe & Tubing

7304901000, 7304903000, 7305312000, 7305314000, 7305316000, 7306303000, 7306503000, 7306601000, 7306603000

Pipe for Piling

7305391000, 7305395000

Wire Drawn

7217101000, 7217102000, 7217103000, 7217104030, 7217104090, 7217105030, 7217105090, 7217106000, 7217107000, 7217108010, 7217108020, 7217108025, 7217108030, 7217108045, 7217108060, 7217108075, 7217108090, 7217109000, 7217201500, 7217203000, 7217204510, 7217204520, 7217204530, 7217204540, 7217204550, 7217204560, 7217204570, 7217204580, 7217206000, 7217207500, 7217301530, 7217301560, 7217303000, 7217304504, 7217304510, 7217304511, 7217304520, 7217304530, 7217304540, 7217304541, 7217304550, 7217304560, 7217304590, 7217306000, 7217307500, 7217905030, 7217905060, 7217905090, 7223001015, 7223001030, 7223001045, 7223001060, 7223001075, 7223005000, 7223009000, 7229200000, 7229200010, 7229200015, 7229200090, 7229901000, 7229905006, 7229905008, 7229905015, 7229905016, 7229905030, 7229905031, 7229905050, 7229905051, 7229909000

Black Plate

7209182510, 7209182520, 7209182550, 7209182580

Tin Plate

7210110000, 7210120000, 7212100000

Tin Free Steel

7210500000

Sheets Hot Rolled

7208106000, 7208260030, 7208260060, 7208270030, 7208270060, 7208380015, 7208380030, 7208380090, 7208390015, 7208390030, 7208390090, 7208406030, 7208406060, 7208530000, 7208540000, 7208900000, 7219130002, 7219130031, 7219130051, 7219130071, 7219130081, 7219140030, 7219140065, 7219140090, 7219230030, 7219230060, 7219240030, 7219240060, 7225307000, 7225407000

Sheets Cold Rolled

7209150000, 7209160030, 7209160060, 7209160070, 7209160090, 7209160091, 7209170030, 7209170060, 7209170070, 7209170090, 7209170091, 7209181530, 7209181560, 7209186000, 7209186020, 7209186090, 7209250000, 7209260000, 7209270000, 7209280000, 7209900000, 7210703000, 7219320005, 7219320020, 7219320025, 7219320035, 7219320036, 7219320038, 7219320042, 7219320044, 7219320045, 7219320060, 7219330005, 7219330020, 7219330025, 7219330035, 7219330036, 7219330038, 7219330042, 7219330044, 7219330045, 7219330070, 7219330080, 7219340005, 7219340020, 7219340025, 7219340030, 7219340035, 7219340050, 7219350005, 7219350015, 7219350030, 7219350035, 7219350050, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7225507000, 7225508010, 7225508015, 7225508085, 7225990010, 7225990090

Sheets & Strip Galv Hot Dipped

7210410000, 7210490030, 7210490090, 7210706060, 7212301030, 7212301090, 7212303000, 7212305000, 7225920000, 7226940000

Sheets & Strip Galv Electrolytic

7210300030, 7210300060, 7210706030, 7212200000, 7225910000, 7226930000

Sheets & Strip All Other Metallic CTD

7210200000, 7210610000, 7210690000, 7210706090, 7210906000, 7210909000, 7212500000, 7212600000

Sheets & Strip—Electrical

7225110000, 7225190000, 7226111000, 7226119030, 7226119060, 7226191000, 7226199000

Strip—Hot Rolled

7211191500, 7211192000, 7211193000, 7211194500, 7211196000, 7211197530, 7211197560, 7211197590, 7220121000, 7220125000, 7226917000, 7226918000

Strip—Cold Rolled

7211231500, 7211232000, 7211233000, 7211234500, 7211236030, 7211236060, 7211236075, 7211236085, 7211292030, 7211292090, 7211294500, 7211296030, 7211296080, 7211900000, 7212401000, 7212405000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010,7220206015, 7220206060, 7220206080, 7220207005, 7220207010, 7220207015, 7220207060, 7220207080, 7220208000, 7220209030, 7220209060, 7220900010, 7220900015, 7220900060, 7220900080, 7226925000, 7226927005, 7226927050, 7226928005, 7226928050, 7226990000

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9230]

RIN 1545–BF18

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations requiring information reporting by a corporation if control of the corporation is acquired, or the corporation has a substantial change in capital structure, and the corporation or any shareholder is required to recognize gain (if any) under section 367(a) and the regulations. This document also contains final regulations concerning information reporting requirements for brokers with respect to transactions described in section 6043(c).

DATES: *Effective Date:* These regulations are effective December 5, 2005.

Applicability Dates: For dates of applicability, see §§ 1.6043–4(i) and 1.6045–3(g).

FOR FURTHER INFORMATION CONTACT: Michael Hara at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Sections 6043(c) and 6045

Section 6043(c) of the Internal Revenue Code (Code) provides that, when required by the Secretary, if any person acquires control of a corporation, or if there is a recapitalization or other substantial change in capital structure of a corporation, the corporation shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

Section 6045 of the Code provides that, when required by the Secretary, every broker shall make a return showing the name and address of each customer, with such details regarding

gross proceeds and such other information as the Secretary may require by forms or regulations.

The Temporary and Proposed Regulations

On November 18, 2002, the IRS published in the **Federal Register** a notice of proposed rulemaking, REG–143321–02, (67 FR 69496) and temporary regulations, TD 9022, (67 FR 69468). These temporary and proposed regulations (the 2002 temporary and proposed regulations) generally required information reporting under section 6043(c) for certain large corporate transactions involving acquisitions of control and substantial changes in the capital structure of a corporation. Two types of reporting were required: Form 8806, ''Statement of Acquisition of Control or Change in Capital Structure,'' to report and describe the transaction, to be attached to the corporation's return, and Form 1099–CAP, ''Changes in Corporate Control and Capital Structure,'' to be filed with respect to shareholders unless they were exempt recipients. Brokers who received Forms 1099–CAP as the record holder of stock in a reporting corporation were required to file Form 1099–CAP with respect to the actual owners of the shares, unless such owners were exempt recipients.

The 2002 temporary regulations were effective only for acquisitions of control and substantive changes in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder were required to recognize gain (if any) as a result of the application of section 367(a).

On December 30, 2003, in response to comments on the 2002 temporary and proposed regulations, the 2002 proposed regulations were withdrawn, REG–143321–02 (68 FR 75182), and a new notice of proposed rulemaking was published, REG–156232–03 (68 FR 75182), and the 2002 temporary regulations were revised in 2003 (the 2003 temporary regulations), TD 9101, (68 FR 75119). The 2003 temporary regulations retained the basic reporting requirements set forth in the 2002 temporary regulations, requiring a domestic corporation involved in an acquisition of control or substantial change in capital structure to file Form 8806 reporting and describing the transactions. The 2003 temporary regulations, however, changed the time and manner of filing, making the Form 8806 a stand-alone form required to be filed within 45 days following the transaction.

The 2003 temporary regulations also revised the 2002 temporary regulations by providing that a reporting corporation was not required to file Forms 1099–CAP with respect to its shareholders that are clearing organizations, or to furnish Forms 1099–CAP to such clearing organizations, if the corporation made an election to permit the IRS to publish information regarding the transaction.

The 2003 temporary regulations expanded the list of exempt recipients to include brokers. The 2003 temporary regulations also required brokers to file an information return reporting the required information with respect to their customers who are not exempt recipients if they know or have reason to know, based on readily available information, that a transaction described in § 1.6043–4T(c) or (d) has occurred. The 2003 temporary regulations required Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' to be used for such reporting. The Form 1099–B was revised in 2004 to include new boxes for the information required under the temporary regulations.

The 2003 temporary regulations were effective only for acquisitions of control and substantial changes in capital structure that occur after December 31, 2002, and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) and the regulations.

Notice 2005–7

On December 31, 2004, the IRS issued Notice 2005–7, 2005–3 I.R.B. 340, (see § 601.601(d)(2) of this chapter) in response to enactment of section 6043A of the Code, Returns Relating to Taxable Mergers and Acquisitions. Section 6043A was added by Section 805 of the American Jobs Creation Act of 2004, Public Law 108–357, (118 Stat. 1418), and provides for information reporting by an acquiring corporation in any taxable acquisition, according to forms or regulations prescribed by the Secretary. Notice 2005–7 stated that taxpayers required to report under Temp. Treas. Reg. §§ 1.6043–4T and 1.6045–3T must continue to report pursuant to those regulations. The notice observed that section 6043A supplements the information reporting provisions of sections 6043(c) and 6045, and it requested comments on the coordination of section 6043A with the requirements of the 2003 temporary and proposed regulations.

Summary of Comments

No comments were received in response to publication of the 2003 temporary and proposed regulations. The Treasury Department and the IRS, however, received comments in response to Notice 2005–7. The subject matter of several of those comments related to issues addressed in the 2003 temporary and proposed regulations. A commentator recommended changes to the reporting obligations under the 2003 proposed regulations in four areas. First, the commentator recommended that reporting corporations furnish to the IRS or to clearing organizations, and the IRS publish, information in addition to that set forth in § 1.6043–4T(a)(1)(v) and (a)(2) of the temporary regulations, including (i) a breakdown of the amount of cash, the fair market value of taxable stock or other property, and the number of shares of nontaxable stock received with respect to each share exchanged, and (ii) CUSIP numbers for both the shares exchanged and those received. Second, the commentator recommended that the regulations clearly state that brokers may separately report cash and other property on separate Forms 1099–B. Third, the commentator recommended that the IRS eliminate the requirement for brokers to report the address of corporations and that the IRS build into the final regulations flexibility concerning the content of Form 1099–B. Finally, the commentator recommended that the Form 1099–B revert back to the 2003 version for 2005 and future years and that the regulations be modified in any way necessary to permit this result.

In comments to Notice 2005–7, another commentator also recommended changes in the Form 1099–B, suggesting that the corporation's name and address become optional data elements.

Explanation of Final Regulations

With the revisions explained below, the final regulations adopt the 2003 temporary regulations. The final regulations limit the information reporting to transactions in which the reporting corporation or any shareholder is required to recognize gain (if any) under section 367(a). The final regulations make certain clarifying changes to the rules of the temporary regulations and one modification in response to comments.

In the final regulations, the definition of *acquisition of control of a corporation* in § 1.6043–4T(c)(1)(i) has been revised to omit transactions where stock representing control of a corporation is distributed by a second corporation to shareholders of the second corporation because such transactions would not result in a recognition of gain under section 367(a) and the regulations. The rules regarding constructive ownership in § 1.6043–4T(c)(3), two or more

corporations acting pursuant to a plan or arrangement in § 1.6043–4T(c)(4), and section 338 elections in § 1.6043–4T(c)(5) have been deleted since those special rules are unnecessary regarding transactions that may result in recognition of gain under section 367(a) and the regulations. The definition of *change in capital structure* in § 1.6043–4T(d)(2) has been modified to remove the inclusion of recapitalizations and redemptions since those transactions would not result in a recognition of gain under section 367(a) and the regulations. Finally, *Examples 2* and *3* in § 1.6043–4T(h) have been omitted because those examples addressed circumstances beyond section 367(a) and the regulations.

The Treasury Department and the IRS continue to consider the comments received with respect to broker reporting under § 1.6045–3T, particularly with respect to appropriate changes to Form 1099–B and that form's interaction with other reporting obligations. Accordingly, to maintain flexibility in the design of Form 1099–B, the final regulations do not include the explicit requirement that Form 1099–B include the corporation's address.

The proposed regulations under sections 6043(c) and 6045 issued on December 30, 2003 (and corrected on February 13, 2004) remain outstanding with respect to the transactions not covered by the final regulations. The Treasury Department and the IRS continue to consider the proper implementation of the additional information reporting provided in section 6043A and the coordination of reporting requirements under sections 6043(c), 6043A, and 6045 to transactions not covered by the final regulations.

The final regulations are effective for acquisitions of control and substantial changes in capital structure that occur after December 5, 2005 and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) and the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Michael Hara, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

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

Section 1.6043–4 also issued under 26 U.S.C. 6043(c).

* * * * *

Section 1.6045–3 also issued under 26 U.S.C. 6045.

* * * * *

■ **Par. 2.** Section 1.6043–4 is added to read as follows:

§ 1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.

(a) *Information returns for an acquisition of control or a substantial change in capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (reporting corporation), the reporting corporation must file a completed Form 8806, ''Information Return for Acquisition of Control or Substantial Change in Capital Structure,'' in accordance with the instructions to that form. The Form 8806 will request information with respect to the following and such other information specified in the instructions:

(i) *Reporting corporation.* The name, address, and taxpayer identification number (TIN) of the reporting corporation.

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, the name, address, and TIN of the common parent of that affiliated group.

(iii) *Acquiring corporation.* The name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (acquiring corporation) and whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Information about acquisition of control or substantial change in capital structure.*

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure; and

(C) A description of and a statement of the fair market value of any stock and other property, if any, provided to the reporting corporation's shareholders in exchange for their stock.

(2) *Consent election.* Form 8806 will provide the reporting corporation with the ability to elect to permit the Internal Revenue Service (IRS) to publish information that will inform brokers of the transaction and enable brokers to satisfy their reporting obligations under § 1.6045–3. The information to be published, whether on the IRS Web site or in an IRS publication, would be limited to the name and address of the corporation, the date of the transaction, a description of the shares affected by the transaction, and the amount of cash and the fair market value of stock or other property provided to each class of shareholders in exchange for a share.

(3) *Time for making return.* Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.

(4) *Exception where transaction is reported under section 6043(a).* No

reporting is required under this paragraph (a) with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under this paragraph (a) if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock, or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(5) of this section.

(b) *Information returns regarding shareholders*—(1) *General rule.* A corporation that is required to file Form 8806 pursuant to paragraph (a)(1) of this section shall file a return of information on Forms 1096, ''Annual Summary and Transmittal of U.S. Information Returns,'' and 1099–CAP, ''Changes in Corporate Control and Capital Structure,'' with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure and who is not an exempt recipient as defined in paragraph (b)(5) of this section. A corporation is not required to file a Form 1096 or 1099–CAP with respect to a clearing organization if the corporation makes the election described in paragraph (a)(2) of this section.

(2) *Time for making information returns.* Forms 1096 and 1099–CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(3) *Contents of return.* A separate Form 1099–CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(5) of this section). The Form 1099–CAP will request information with respect to the following and such other information as may be specified in the instructions:

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder; and

(iv) The aggregate amount of cash and the fair market value of any stock or other property provided to the shareholder in exchange for its stock.

(4) *Furnishing of forms to shareholders.* The Form 1099–CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure. The Form 1099–CAP filed with respect to a clearing organization must be furnished to the clearing organization on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurred. A Form 1099–CAP is not required to be furnished to a clearing organization if the reporting corporation makes the election described in paragraph (a)(2) of this section.

(5) *Exempt recipients.* A corporation is not required to file a Form 1099–CAP pursuant to this paragraph (b) with respect to any of the following shareholders that is not a clearing organization:

(i) Any shareholder who receives stock in an exchange that is not subject to gain recognition under section 367(a) and the regulations.

(ii) Any shareholder if the corporation reasonably determines that the total amount of cash and the fair market value of stock and other property received by the shareholder does not exceed $1,000.

(iii) Any shareholder described in paragraphs (b)(5)(iii)(A) through (M) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(5)(iii)(A) through (M) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in § 31.3406(h)–3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(5)(iii)(A) through (M) of this section based on the applicable indicators described in § 1.6049–4(c)(1)(ii).

(A) A corporation, as described in § 1.6049–4(c)(1)(ii)(A) (except for corporations for which an election under section 1362(a) is in effect).

(B) A tax-exempt organization, as described in § 1.6049–4(c)(1)(ii)(B)(*1*).

(C) An individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(D) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(E) A state, as described in § 1.6049–4(c)(1)(ii)(E).

(F) A foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(G) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(H) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H).

(I) A securities or commodities dealer, as described in § 1.6049–4(c)(1)(ii)(I).

(J) A real estate investment trust, as described in § 1.6049–4(c)(1)(ii)(J).

(K) An entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), as described in § 1.6049–4(c)(1)(ii)(K).

(L) A common trust fund, as described in § 1.6049–4(c)(1)(ii)(L).

(M) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(5)(iv), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by using the terms ''corporation'' and ''shareholder'' in place of the terms ''withholding agent'' and ''payee'' and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.6049–5(d) shall apply by using the terms ''corporation'' and ''shareholder'' in place of the terms ''payor'' and ''payee''. Nothing in this paragraph (b)(5)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure within the meaning of this section.

(6) *Coordination with other sections.* In general, no reporting is required

under this paragraph (b) with respect to amounts that are required to be reported under sections 6042 or 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections. A corporation must satisfy the requirements under this paragraph (b) with respect to any shareholder of record that is a clearing organization.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, an acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions—

(i) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(ii) After the acquisition, the second corporation has control of the first corporation;

(iii) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is $100 million or more;

(iv) The shareholders of the first corporation receive stock or other property pursuant to the acquisition; and

(v) The first corporation or any shareholder of the first corporation is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1). For these purposes the rules of section 318 as modified by the rules of section 958(b) shall apply in determining the ownership of stock.

(d) *Substantial change in capital structure of a corporation*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is $100 million or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if—

(i) The corporation in a transaction or series of transactions—

(A) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(B) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(C) Changes its identity, form or place of organization; and

(ii) The corporation or any shareholder is required to recognize gain (if any) under section 367(a) and the regulations, as a result of the transaction.

(e) *Reporting by successor entity.* If a corporation (transferor) transfers all or substantially all of its assets to another entity (transferee) in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) and (b) of this section. If transferor does not satisfy one or both of those reporting obligations, then transferee must do so. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed $500 for each day the failure continues (up to a maximum of $100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the failure to satisfy the requirement to file on magnetic media as required by section 6011(e) and § 1.6011–2. In addition, criminal penalties under sections 7203, 7206 and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under sections 6042, 6043(a), or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds $100 million. The examples are as follows:

Example 1. The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a foreign corporation, pursuant to sections 351 and 354. After the transaction, Y owns all the outstanding X stock. Assume that, under section 367(a) and the regulations, the X shareholders must recognize gain (if any) on the exchange of their stock. Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. X must file Form 8806 reporting the transaction. X must also file a Form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099–CAP to that shareholder. If X elects on the Form 8806 to permit the IRS to publish information regarding the transaction, X is not required to file or furnish Forms 1099–CAP with respect to shareholders that are clearing organizations.

Example 2. The facts are the same as in *Example 1*, except X hires a transfer agent to effectuate the exchange. The transfer agent is treated as a broker under section 6045 and is required to report the fair market value of the Y stock received by X's shareholders under § 1.6045–3. Under paragraph (b)(6) of this section, X is not required to file information returns under paragraph (b) of this section with respect to a shareholder of record, unless X knows or has reason to know that the transfer agent does not satisfy its information reporting obligation under § 1.6045–3 with respect to that shareholder. Thus, if the transfer agent satisfies its information reporting requirements under § 1.6045–3 with respect to shareholder I, an individual who receives X stock, X is not required to file a Form 1099–CAP with respect to I. Conversely, if the transfer agent does not have an information reporting obligation under § 1.6045–3 with respect to one of X's shareholders of record (for example, a clearing organization that is an exempt recipient under § 1.6045–3(b)(2)), or if X knows or has reason to know that the transfer agent has not satisfied its information reporting requirement with respect to a shareholder, then X must provide a Form 1099–CAP to that shareholder.

(i) *Effective date.* This section applies to transactions occurring after December 5, 2005.

§ 1.6043–4T [Removed]

■ **Par. 3.** Section 1.6043–4T is removed.

■ **Par. 4.** Section 1.6045–3 is added to read as follows:

§ 1.6045–3 Information reporting for an acquisition of control or a substantial change in capital structure.

(a) *In general.* Any broker (as defined in § 1.6045–1(a)(1)) that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information (including, for example,

information from a clearing organization or from information published by the Internal Revenue Service (IRS)) has engaged in a transaction described in § 1.6043–4(c) (acquisition of control) or § 1.6043–4(d) (substantial change in capital structure) shall file a return of information with respect to the customer, unless the customer is an exempt recipient as defined in paragraph (b) of this section.

(b) *Exempt recipients.* A broker is not required to file a return of information under this section with respect to the following customers:

(1) Any customer who receives only cash in exchange for its stock in the corporation, which must be reported by the broker pursuant to § 1.6045–1.

(2) Any customer who is an exempt recipient as defined in § 1.6043–4(b)(5) or § 1.6045–1(c)(3)(i).

(c) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on Forms 1096, ''Annual Summary and Transmittal of U.S. Information Returns,'' and 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(d) *Contents of return.* A separate Form 1099–B must be prepared for each customer. The Form 1099–B will request information with respect to the following and such other information as may be specified in the instructions:

(1) The name, address and taxpayer identification number (TIN) of the customer;

(2) The name of the corporation which engaged in the transaction described in § 1.6043–4(c) or (d);

(3) The number and class of shares in the corporation exchanged by the customer; and

(4) The aggregate amount of cash and the fair market value of any stock or other property provided to the customer in exchange for its stock.

(e) *Furnishing of forms to customers.* The Form 1099–B prepared for each customer must be furnished to the customer on or before January 31 of the year following the calendar year in which the customer receives stock, cash or other property.

(f) *Single Form 1099.* If a broker is required to file a Form 1099-B with respect to a customer under §§ 1.6045–3 and 1.6045–1(c) with respect to the same transaction, the broker may satisfy the requirements of both sections by filing and furnishing one Form 1099–B that contains all the relevant information, as provided in the instructions to Form 1099–B.

(g) *Effective date.* This section applies with respect to any acquisition of control and any substantial change in capital structure occurring after December 5, 2005.

§ 1.6045–3T [Removed]

■ **Par. 5.** Section 1.6045–3T is removed.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: November 22, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–23470 Filed 12–2–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 204

RIN 1010–AC30

States' Decisions on Participating in Accounting and Auditing Relief for Federal Oil and Gas Marginal Properties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of states' decisions to participate or not participate in accounting and auditing relief for Federal oil and gas marginal properties located in their state for calendar year 2006.

SUMMARY: The Minerals Management Service (MMS) published final regulations on September 13, 2004 (69 FR 55076), to provide accounting and auditing relief for marginal Federal oil and gas properties. The rule requires MMS to publish in the **Federal Register** the decisions of the states concerned to allow or not to allow one or both forms of relief in their state. As required in the rule, MMS provided each state receiving a portion of the Federal royalties with a list of qualifying marginal Federal oil and gas properties located in the state so that each affected state could decide whether to participate in one or both relief options. This Notice provides the decisions by the respective states concerned to allow one or both types of relief.

DATES: Effective Date: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Williams, Manager, Federal Onshore Oil and Gas Compliance and Asset Management, telephone (303) 231–3403, FAX (303) 231–3744, e-mail to *mary.williams@mms.gov*, or mail to P.O. Box 25165, MS 392B2, Denver Federal Center, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The rule implemented certain provisions of Section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 and provides two options for relief: (1) Notification-based relief for annual reporting, and (2) other requested relief, as proposed by industry and approved by MMS and the state concerned. The rule requires that MMS publish by December 1 of each year a list of the states and the decisions of each state regarding marginal property relief.

To qualify for the first option of relief (notification-based relief) for calendar year 2006, properties must have produced less than 1,000 barrels-of-oil-equivalent (BOE) per year for the base period (July 1, 2004–June 30, 2005). Annual reporting relief will begin on January 1, 2006, with the annual report and payment due February 28, 2007 (unless an estimated payment is on file, which will move the due date to March 31, 2007). To qualify for the second option of relief (other requested relief), properties must have produced less than 15 BOE per well per day for the base period.

The following table shows the states that have marginal properties, where a portion of the royalties are shared between the state and MMS, and the states' decisions whether to allow one or both forms of relief.

State	Notification-based relief (less than 1,000 BOE per year)	Request-based relief (less than 15 BOE per well per day)
Alabama	No	No.
Arkansas	Yes	Yes.
California	No	No.
Colorado	Yes	Yes.
Kansas	Yes	No.

State	Notification-based relief (less than 1,000 BOE per year)	Request-based relief (less than 15 BOE per well per day)
Louisiana	Yes	Yes.
Michigan	Yes	No.
Montana	Yes	No.
Nevada	No	No.
New Mexico	No	No.
North Dakota	No	No.
Oklahoma	No	No.
South Dakota	No	No.
Utah	No	No.
Wyoming	Yes	No.

Federal oil and gas properties located in all other states are eligible for relief if they qualify as marginal properties under the rule and if no portion of the royalties derived from the property is shared with the state.

For information on how to obtain relief, please refer to the rule, which can be viewed on the MMS Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/AC30.htm*.

All correspondence, records, or information received in response to this Notice are subject to disclosure under the Freedom of Information Act. All information provided will be made public unless the respondent identifies which portions are proprietary. Please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. Proprietary information is protected by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), the Indian Mineral Development Act of 1982 (25 U.S.C. 2103), and Department regulations (43 CFR part 2).

Dated: November 16, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05–23621 Filed 12–2–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 234 and 236

[Docket No. FRA–2001–10160]

RIN 2130–AA94

Standards for Development and Use of Processor-Based Signal and Train Control Systems; Clarification and Correcting Amendments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; clarification and correcting amendments.

SUMMARY: FRA is clarifying preamble language and correcting rule text language in FRA's Standards for Development and Use of Processor-Based Signal and Train Control Systems, a final rule published on March 7, 2005 (PTC Rule). First, some language in the section-by-section analysis portion of the preamble to the PTC Rule inadvertently differs from the actual regulatory language, and FRA is noting the unintended variation to avoid confusion. Second, FRA is clarifying language regarding the applicability of new 49 CFR part 236, subpart H (the Processor-Based Standards) to highway-rail grade crossing warning systems (HGCWS). FRA wants to ensure that the rule language conforms with FRA's initial intent that the regulation apply to only certain HGCWS. Therefore, FRA is adding a provision to clarify which HGCWS products may be excluded from the requirements of the PTC Rule. FRA is also adding a provision to clarify that certain HGCWS products excluded from the requirements of the Processor-Based Standards may, at the option of the railroad, be made subject to the Processor-Based Standards. Third, FRA is adding a provision to clarify which HGCWS products shall be included in the software management control plans pursuant to 49 CFR 236.18. Finally, FRA is correcting a minor error in which a provision of the Processor-Based Standards was incorrectly cited.

DATES: This rule is effective January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Tom McFarlin, Staff Director, Signal and Train Control Division, Office of Safety, FRA 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6203); or Melissa Porter, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6034).

SUPPLEMENTARY INFORMATION: On March 7, 2005, FRA published the PTC Rule, which establishes performance-based standards for the development and use of processor-based signal and train control systems. 70 FR 11052. Since the publication of the PTC Rule, FRA has determined that certain provisions need clarification or correction. First, FRA notes that some incorrect terms and an incorrect date were included in the section-by-section analysis portion of the preamble, all of which differ from the actual regulatory text. FRA is correcting the errors to prevent misinterpretations. Second, in 49 CFR 234.275, ''Processor-Based Systems,'' FRA is clarifying the category of HGCWS to which it intended portions of the PTC Rule to apply. (All references in this final rule to a section or other provision are references to a section or other provision in title 49 of the Code of Federal Regulations, unless otherwise noted). FRA is correcting that section to include a provision to exclude certain HGCWS products from the requirements of the PTC Rule, as the agency similarly did for signal and train control system products in § 236.911. FRA is further correcting § 234.275 to make it explicit that a railroad has the right to qualify an excluded product and make it subject to the Processor-Based Standards. Third, FRA is clarifying what HGCWS should be included in a railroad's software management control plan, pursuant to § 236.18. Finally, FRA is correcting an erroneous section reference in § 236.913(c)(1). The section referenced does not exist. FRA more specifically discusses these issues in the ''Section-by-Section Analysis'' below.

Section-by-Section Analysis

1a. Preamble Language for § 236.18, ''Software Management Control [Plan]''

In the section-by-section analysis of § 236.18, FRA referred to the correct term ''software management control plan'' variously as ''software management control'' and ''software management plan.'' FRA notes that ''software management control'' and ''software management plan'' are

intended to refer to ''software management control plan.''

1b. Preamble Language for § 236.911, ''Exclusions''

In the section-by-section analysis of § 236.911, FRA erroneously stated that ''[p]aragraph (a) provides that the subpart does not apply to products in service as of May 6, 2005.'' The referenced date should have read ''June 6, 2005'' rather than ''May 6, 2005.'' FRA does not believe that this error has created significant confusion because the date is correct in the regulatory text itself, but in an effort to eliminate any possible confusion, we are pointing out that the date cited in the analysis should have been June 6, 2005.

Corrections to Regulatory Text

2. Section 234.275, ''Processor-Based Systems''

As issued in the PTC Rule, § 234.275(b) requires that HGCWS containing ''new or novel technology or that provide safety-critical data to a railroad signal [sic] system'' comply with part 236, subpart H, the Processor-Based Standards. Section 236.911, ''Exclusions,'' provides that products designed in accordance with subparts A through G of part 236, that were in development as of March 7, 2005, may be excluded from the requirements of the Processor-Based Standards, but FRA inadvertently did not provide a similar exclusion for products designed in accordance with 49 CFR part 234, ''Grade Crossing Signal System Safety,'' subparts A through D. Several railroads and suppliers submitted notifications to FRA by June 6, 2005, of various products that were in development, some of which contain processor-based highway-rail grade crossing warning systems, subsystems, or components (i.e., products that were designed in accordance with 49 CFR part 234, subparts A through D).

In order to clarify that the exclusion from the Processor-Based Standards also applies to HGCWS products under development as of March 7, 2005, FRA is amending § 234.275(c) accordingly. The reasons for this decision are similar to those provided for excluding certain products pursuant to § 236.911, ''Exclusions'': (1) it would be too costly for the railroads and suppliers to re-do work and analysis for a product on which development efforts have already begun, and (2) it would be unfair to subject later implementation of such technology to the requirements of the Processor-Based Standards. In addition, FRA will provide railroads and suppliers with the option to later elect to qualify an excluded product under the Processor-Based Standards. Therefore, in this technical amendment, FRA is adding a provision in § 234.275(b) to exclude from the requirements of the Processor-Based Standards, those processor-based highway-rail grade crossing warning systems, subsystems, or components that meet all of the following criteria: (1) Currently under development, (2) designed in accordance with 49 CFR part 234, subparts A through D, and (3) not in service as of December 5, 2005, but will be placed in service as of December 5, 2008. Railroads and suppliers will, however, be required to submit a notification to FRA regarding the product under development by March 6, 2006 and the product must be placed in service as of December 5, 2008. Any railroad or supplier that previously submitted a notification letter to FRA pursuant to § 236.911 regarding a HGCWS need not submit a new notification letter. FRA will consider the previously submitted letter when determining whether a product should be excluded.

If read literally, the last sentence of § 234.275(c) as issued in the PTC Rule requires more HGCWS to be subject to the software management control plan requirement of § 236.18 than FRA intended. In particular, the rule language currently indicates that *any* existing products that both are used at HGCWS and provide safety-critical data to, or receive safety-critical data from, a railroad signal or train control system, are required to be included in the software management control plan, even if they are not processor-based, pursuant to § 236.18. The intent of requiring a software management control plan under § 236.18 is to ensure that the proper and intended version of software not required to be included in a Product Safety Plan pursuant to § 236.907 of this chapter, is documented and maintained throughout the life-cycle of the system. Only processor-based systems involve software, and thus the inclusion of a non-processor-based HGCWS in a software management control plan would provide no benefit, but would only add unnecessarily to the cost of implementation of the PTC Rule. In addition, FRA did not intend for HGCWS that receive information from a signal or train control system to be subject to the requirements of § 236.18. FRA is therefore restructuring § 234.275 to correct these errors and to clarify the intended requirements of the regulation.

3. Section 236.913, ''Filing and Approval of PSPs''

FRA is amending § 236.913(c)(1) as issued in the PTC Rule to correct an incorrect regulatory reference. The reference to non-existent § 236.917(e)(1) should be changed to § 236.917(a)(1). Accordingly, the regulatory text is changed to reflect the correct regulatory cite.

Notice and Comment Procedures

Because these corrections and clarifications do no more than revise the PTC Rule to meet FRA's original intent when issuing the rule, notice and comment procedures are ''impracticable, unnecessary, or contrary to the public interest within the meaning of section 553 (b)(3)(B) of the Administrative Procedure Act. Public comment is unnecessary because in making these technical amendments, FRA is not exercising discretion in any way that would be informed by public comment. In addition, this revised rule poses no addition burden on any person, but rather provides a benefit to those who were inadvertently made subject to the PTC Rule, who are now no longer subject to the PTC Rule's requirements. Therefore, FRA is proceeding directly to this final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The technical changes made in this rule will not increase the costs or alter the benefits associated with this regulation beyond what was originally measured in the cost benefit analysis completed for the PTC Rule. The technical changes will, in fact, reduce the cost of complying with the rule back to the level contemplated when FRA completed its initial cost-benefit analysis. However, this cost reduction has not been specifically calculated. Because these technical amendments and corrections will bring the rule into compliance with FRA's original cost-benefit analysis, FRA does not believe it necessary to re-calculate the costs and benefits.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This final rule amends and clarifies existing requirements. Because the technical amendments contained in

the document generally clarify requirements currently contained in the PTC Rule or allow for greater flexibility in complying with the PTC Rule, FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this final rule.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The rule meets the criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State and local officials were involved in developing the PTC Rule through the Railroad Safety Advisory Committee (RSAC). The RSAC has as permanent members two organizations representing State and local interests: The American Association of State Highway and Transportation Officials and the Association of State Rail Safety Managers. RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. Thus, in accordance with Executive Order 13132, preparation of a Federalism Assessment was not warranted in the PTC Rule and is not warranted for this final rule either.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,700,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local, and tribal governments and the private sector. The rule issued today does not include any mandates, which will result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of a statement is not required.

Need for Correction

As published, the PTC Rule contains errors that need to be corrected.

List of Subjects

49 CFR Part 234

Highway safety, Railroad safety.

49 CFR Part 236

Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

■ In consideration of the foregoing, FRA corrects chapter II, subtitle B, of title 49, Code of Federal Regulations as follows:

PART 234—[AMENDED]

■ 1. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Revise § 234.275 to read as follows:

§ 234.275 Processor-based systems.

(a) *Applicable definitions.* The definitions in § 236.903 of this chapter shall apply to this section, where applicable.

(b) *Use of performance standard authorized or required.*

(1) In lieu of compliance with the requirements of this subpart, a railroad may elect to qualify an existing processor-based product under part 236, subpart H of this chapter.

(2) Highway-rail grade crossing warning systems, subsystems, or components that are processor-based and that are first placed in service after June 6, 2005, which contain new or novel technology, or which provide safety-critical data to a railroad signal or train control system that is governed by part 236, subpart H of this chapter, shall also comply with those requirements. New or novel technology refers to a technology not previously recognized for use as of March 7, 2005.

(3) Products designed in accordance with subparts A through D of this part, which are not in service but are in the developmental stage prior to December 5, 2005 (or for which a request for exclusion was submitted prior to June 6, 2005 pursuant to § 236.911 of this chapter), may be excluded from the requirements of part 236, subpart H of this chapter upon notification to FRA by March 6, 2006, if placed in service by December 5, 2008 (or March 7, 2008 for those products for which a request for exclusion was submitted to FRA prior to June 6, 2005). Railroads may continue to implement and use these products and components from these existing products. A railroad may at any time elect to have products that are excluded made subject to 49 CFR part 236, subpart H, by submitting a Product Safety Plan as prescribed in § 236.913 of this chapter and otherwise complying with part 236, subpart H of this chapter.

(c) *Product safety plan justifications.* The Product Safety Plan (see § 236.903 of this chapter) must explain how the performance objective sought to be addressed by each of the particular requirements of this subpart is met by the product, why the objective is not relevant to the product's design, or how safety requirements are satisfied using alternative means. Deviation from those particular requirements is authorized if an adequate explanation is provided, making reference to relevant elements of the Product Safety Plan, and if the product satisfies the performance standard set forth in § 236.909 of this chapter. (See § 236.907(a)(14) of this chapter.)

(d) *Specific requirements.* The following exclusions from the latitude provided by this section apply:

(1) Nothing in this section authorizes deviation from applicable design requirements for automated warning devices at highway-rail grade crossings in the Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition, Federal Highway Administration (FHWA), dated December 18, 2000, including Errata #1 to MUTCD 2000 Millennium Edition dated June 14, 2001 (*http://mutcd.fhwa.dot.gov/*).

(2) Nothing in this section authorizes deviation from the following requirements of this subpart:

(i) § 234.207(b) (Adjustment, repair, or replacement of a component);

(ii) § 234.209(b) (Interference with normal functioning of system);

(iii) § 234.211 (Security of warning system apparatus);

(iv) § 234.217 (Flashing light units);

(v) § 234.219 (Gate arm lights and light cable);

(vi) § 234.221 (Lamp voltage);

(vii) § 234.223 (Gate arm);

(viii) § 234.225 (Activation of warning system);

(ix) § 234.227 (Train detection apparatus)—if a train detection circuit is employed to determine the train's presence;

(x) § 234.229 (Shunting sensitivity)—if a conventional track circuit is employed;

(xi) § 234.231 (Fouling wires)—if a conventional train detection circuit is employed;

(xii) § 234.233 (Rail joints)—if a track circuit is employed;

(xiii) § 234.235 (Insulated rail joints)—if a track circuit is employed;

(xiv) § 234.237 (Reverse switch cut-out circuit); or

(xv) § 234.245 (Signs).

(e) *Separate justification for other than fail-safe design.* Deviation from the requirement of § 234.203 (Control circuits) that circuits be designed on a fail-safe principle must be separately justified at the component, subsystem, and system level using the criteria of § 236.909 of this chapter.

(f) Software management control for certain systems not subject to a performance standard. Any processor-based system, subsystem, or component subject to this part, which is not subject to the requirements of part 236, subpart H of this chapter but which provides safety-critical data to a signal or train control system shall be included in the software management control plan requirements as specified in § 236.18 of this chapter.

PART 236—[AMENDED]

■ 3. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20501–20505; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 4. Amend § 236.913 by revising paragraph (c)(1) to read as follows:

§ 236.913 Filing and approval of PSPs.

* * * * *

(c) * * *

(1) Not less than 180 days prior to planned use of the product in revenue service as described in the PSP or PSP amendment, the railroad shall submit an informational filing to the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590. The informational filing must provide a summary description of the PSP or PSP amendment, including the intended use of the product, and specify the location where the documentation as described in § 236.917(a)(1) is maintained.

* * * * *

Issued in Washington, DC on November 17, 2005.

Joseph H. Boardman,

Administrator, Federal Railroad Administration.

[FR Doc. 05–23571 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040830250–5062–03; I.D. 112305B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments

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

ACTION: Inseason adjustments to management measures; request for comments.

SUMMARY: NMFS announces changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) December 1, 2005. Comments on this rule will be accepted through January 4, 2006.

ADDRESSES: You may submit comments, identified by I.D. number 112305 by any of the following methods:

- E-mail: *GroundfishInseason5.nwr@noaa.gov*. Include I.D. number 112305B in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Carrie Nordeen.
- Mail: D. Robert Lohn, Administrator, Northwest Region,NMFS, Attn: Carrie Nordeen, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen (Northwest Region, NMFS), phone: 206–526–6144; fax: 206–526–6736; and e-mail: *carrie.nordeen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region website at: *www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *www.pcouncil.org*.

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for 2005 - 2006 were codified in the CFR (50 CFR part 660, subpart G). They were published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012). The final rule was subsequently amended on March 18, 2005 (70 FR 13118); March 30, 2005 (70 FR 16145); April 19, 2005 (70 FR 20304); May 3, 2005 (70 FR 22808); May 4, 2005 (70 FR 23040); May 5, 2005 (70 FR 23804); May 16, 2005 (70 FR 25789); May 19, 2005 (70 FR 28852); July 5, 2005 (70 FR 38596); August 22, 2005 (70 FR 48897); August 31, 2005 (70 FR 51682); October 5, 2005 (70 FR 58066); October 20, 2005 (70 FR 61063); October 24, 2005 (70 FR 61393); and November 1, 2005 (70 FR 65861).

Acceptable biological catches (ABCs) and optimum yields (OYs) are established for each year. Management measures are established at the start of the biennial period, and adjusted throughout the biennial management period, to keep harvest within the OYs. At the Pacific Council's October 30 - November 4, 2005, meeting in San Diego, California, the Pacific Council's Groundfish Management Team (GMT) considered 2005 catch data and new West Coast Groundfish Observer Program (WCGOP) data and made recommendations to adjust groundfish management measures for December

2005 and for all of 2006. Because the revised management measures for December 2005 and January and February 2006 must be implemented quickly, these adjustments are being implemented in this final rule. The management measures for the remainder of 2006 (March - December) will be implemented through a notice and comment rulemaking, projected to be effective by March 1, 2006.

The following changes to current groundfish management measures for December 2005 through February 2006 were recommended by the Pacific Council, in consultation with the Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its October 30 - November 4, 2005, meeting. For December 2005, the adjustments recommended by the Pacific Council are as follows: prohibition on taking and retaining, possessing, or landing of minor slope rockfish, splitnose rockfish, and petrale sole in the limited entry bottom trawl fisheries; Federal regulations for recreational management measures off Oregon that conform with the State of Oregon's management measures; and adjustments to recreational management measures off California.

For January and February 2006, adjustments recommended by the Pacific Council are as follows: adjustments to limited entry and open access cumulative limits for the sablefish daily trip limit (DTL) fishery north of 36° N. lat.; adjustments to limited entry trawl cumulative limits for sablefish, thornyheads, Dover sole, other flatfish, petrale sole, arrowtooth flounder, slope rockfish, splitnose rockfish, and lingcod; adjustments to limited entry fixed gear and open access cumulative limits for shelf, shortbelly, and widow rockfish south of 34°27′ N. lat., and minor nearshore and black rockfish between 42°00′ N. lat. and 40°10′ N. lat.; adjustments to the trawl Rockfish Conservation Area (RCA) boundaries; and adjustments to recreational management measures.

Limited Entry Trawl Fisheries in 2005

The GMT reviewed Pacific Fisheries Information Network (PacFIN) Quota Species Monitoring (QSM) data through October 22, 2005, and noted that the catch of petrale sole was 2,783 mt (2,685 mt of landed catch plus 98 mt of discard). This level of harvest is 0.8 percent above petrale sole's 2005 ABC/OY of 2,762 mt. Because the FMP defines overfishing as exceeding the ABC, the petrale sole stock is now thought to be subject to overfishing in 2005. To prevent continued overfishing, the GMT considered management measures that would curtail further catch of petrale sole through the end of the year. Unfortunately, there appear to be no additional management measures available to completely eliminate catch of petrale sole. Inseason management measures designed to slow the catch of petrale sole that were implemented in October (70 FR 58066, October 5, 2005), such as limited entry trawl cumulative limit reductions and moving the trawl RCA into deeper water, should substantially reduce petrale sole catch for the remainder of the year.

In order to identify the conservation risk to the petrale sole stock resulting from allowing fisheries with petrale bycatch to continue in December, the GMT reviewed historical PacFIN petrale sole annual landings data by fishery. These data show that through the remainder of the year, the limited entry bottom trawl fishery operating seaward of the trawl RCA is expected to result in the highest petrale sole mortality relative to other fisheries. Only trace amounts of petrale sole catch are anticipated in the limited entry and open access fixed gear fisheries coastwide, open access trawl fisheries off California, and limited entry trawl fisheries shoreward of the trawl RCA south of 36° N. lat.

Under current management measures, the GMT anticipates an additional 5 mt – 10 mt (or an additional 0.2 percent – 0.35 percent over petrale sole's ABC/OY) of non-tribal petrale sole catch will be taken by the limited entry bottom trawl fishery in November and December. With this additional non-tribal catch, the catch of petrale sole in 2005 is predicted to exceed the petrale sole ABC by 0.9 percent 1.1 percent. The tribal bottom trawl fishery, which opens November 1, 2005, could potentially harvest an additional 20 mt – 30 mt of petrale sole. This year's higher than anticipated catch of petrale sole is particularly unexpected, given that the catch of petrale sole has been substantially less than its ABC for the past several years. For example, in 2004, the landed catch of petrale sole was 1,961 mt within an ABC of 2,762 mt. In 2003 and 2002, the total catch of petrale sole was 2,161 mt and 1,965 mt, respectively, each within an ABC of 2,762 mt.

When the Pacific Council was deliberating how to curtail additional catch of petrale sole for 2005, they considered closing several fisheries for the remainder of the year. The closure, however, would not be able to be implemented until December. The expectation of a total fishery closure would likely result in a race for fish during November, potentially increasing the mortality of petrale sole above what would otherwise occur if the fishery were to remain open.

Of the winter limited entry trawl fisheries, the petrale sole and slope rockfish fisheries are prosecuted on hard bottom substrate while the DTS (Dover sole, thornyhead, sablefish) fishery occurs on muddy, soft bottom substrate . Because these fisheries are geographically distinct, maintaining the DTS fishery through the end of 2005 is predicted to result in minimal additional catch of petrale sole (5 – 10 mt). Therefore, instead of closing the entire fishery and starting a race for fish, the Pacific Council recommended that the DTS fishery continue under currently scheduled management measures designed to slow the trawl harvest for the remainder of 2005, but that the retention of petrale sole, slope rockfish, and splitnose rockfish be prohibited coastwide for the remainder of the year. NMFS concurs with the Pacific Council's recommendation and is implementing the following adjustments to limited entry trawl management measures: (1) North of 40°10′ N. lat., decrease limited entry trawl minor slope and darkblotched rockfish cumulative limits from 4,000 lb (1,814 kg) per 2 months to closed (meaning that taking and retaining, possessing, or landing is prohibited), (2) North of 40°10′ N. lat., decrease limited entry trawl petrale sole cumulative sub-limit from 2,000 lb (907 kg) per 2 months to closed, (3) Between 40°10′ N. lat. and 38° N. lat., decrease limited entry trawl minor slope rockfish and splitnose rockfish cumulative limits from 6,000 lb (2,722 kg) per 2 months to closed, (4) South of 38° N. lat., decrease limited entry trawl minor slope rockfish and splitnose rockfish cumulative limits from 40,000 lb (18, 144 kg) per 2 months to closed, and (5) South of 40°10′ N. lat., decrease limited entry trawl petrale sole cumulative limit from 2,000 lb (907 kg) per 2 months to closed.

Oregon and California Recreational Groundfish Fisheries in 2005

Due to projected attainment of Oregon's recreational black rockfish harvest guideline, the Oregon Department of Fish and Wildlife (ODFW) took action on October 18, 2005, to close recreational groundfish fishing in the ocean and estuary boat fisheries shoreward of the recreational RCA boundary that approximates the 40–fm (73–m) depth contour and to prohibit retention of black rockfish in both the ocean and estuary boat fisheries at any depth for the remainder of 2005. Shore-based fisheries (angling

from jetties, beaches, rock formations, or piers, and divers originating from shore) remain open for the remainder of 2005. The Pacific Council recommended that Federal regulations conform to ODFW's October inseason action. NMFS concurs with this recommendation and is implementing similar regulations with this inseason action for the remainder of 2005.

Management measures for recreational fisheries off California are adjusted to conform Federal and state regulations for the recreational RCA between 40°10′ N. lat. and 36° N. lat. At the Pacific Council's April 2005 meeting, the Pacific Council recommended, in part, that the recreational RCA regulations prohibit fishing seaward of the 20–fm (37–m) depth contour for July through December. NMFS inadvertently missed this recommendation for December in the May inseason action (70 FR 23040, May 4, 2005) and, therefore, Federal regulations implemented a recreational RCA extending from the shoreline through the EEZ during December. With this notice, NMFS will adjust 2005 Federal regulations regarding seasonality of the recreational RCA for the area between 40°10' N. lat. and 36° N. lat. as follows: Between 40°10′ N. lat. and 36° N. lat., recreational fishing for all groundfish (except ''other flatfish'') is prohibited seaward of the 20–fm (37–m) depth contour along the mainland coast and along islands and offshore seamounts from July 1 through December 31; and is closed entirely from January 1 through June 30 (i.e., prohibited seaward of the shoreline).

Limited Entry Trawl Fisheries in 2006

The trawl bycatch model was updated with bycatch and discard rates based on new WCGOP data from September 2004 through April 2005. This update also incorporated 4 months of data (January – April 2005) when selective flatfish gear was required shoreward of the trawl RCA north of 40°10′ N. lat. The GMT used the updated trawl bycatch model to analyze adjustments to trawl RCA boundaries and bimonthly limits for target species (sablefish, thornyheads, Dover sole, petrale sole, other flatfish, arrowtooth, slope rockfish, and splitnose rockfish) for 2006. The management measures for January and February are being implemented in this rule.

Of note, the GMT proposed splitting the Period 1 cumulative limits (those for January and February) into two, 1–month cumulative limits. This cumulative limit adjustment accomplishes several goals. It is the Pacific Council's and NMFS's intent to begin 2006 with conservative enough management measures to avoid drastic harvest reductions and/or closures in the later part of the year. Additionally, there is a possibility that groundfish biennial management measures for 2007 – 2008 may not be in place by January, 1, 2007, and if that is the case, management in 2007 will continue under 2006 management measures until the biennial 2007 – 2008 management measures become effective. Should this occur, conservative management measures for January and February of 2006 would facilitate implementing any harvest reductions that may be necessary in 2007. In summary, splitting Period 1 into separate cumulative limits for January and February should be conservative enough to promote year round fishing opportunities in 2006, should accommodate any reductions to 2007 OYs for managed species, and should allow flexibility to adjust limits in February 2007 if necessary.

The Pacific Council recommended adjustments to limited entry trawl cumulative limits for certain target species coastwide, such as sablefish, thornyheads, Dover sole, other flatfish, and arrowtooth flounder, based on projections from the trawl bycatch model. These adjustments, together with measures to be proposed for the remainder of 2006, are projected to keep harvest within the OYs. NMFS concurs with this recommendation; therefore, adjusted cumulative limits for these species during January and February 2006 are shown in Table 3 (North) and Table 3 (South). Adjustments to limited entry trawl cumulative limits for other target species are described in detail below.

Petrale Sole

In order to avoid exceeding the petrale sole ABC in 2006 and to promote year round fishing opportunities, the Pacific Council recommended establishing cumulative limits in the bottom trawl fishery during Period 1 (January – February). In the past, petrale sole landings were not limited during this period. NMFS concurs with this recommendation. Therefore, north of 40°10′ N. lat., limited entry trawl large and small footrope limits are 30,000 lb (13,608 kg) per month in both January and February. North of 40°10′ N. lat., limited entry selective flatfish trawl limits are 12,500 lb (5,670 kg) per month in both January and February. South of 40°10′ N. lat., limited entry trawl limits are 30,000 lb (13,608 kg) per month in both January and February.

Slope and Splitnose Rockfish Limits Between 40°10′ N. lat. and 38° N. lat.

At the most recent Pacific Council meeting, the GMT considered a request to liberalize management measures for minor slope and splitnose rockfish in 2006. The harvest of these species has been constrained in recent years because they co-occur with darkblotched rockfish, an overfished rockfish species.

Darkblotched rockfish are not distributed uniformly along the coast but instead are most concentrated in waters off Washington and northern Oregon, with a gradient of decreasing density extending south. Only about three percent of the NMFS triennial bottom trawl survey's cumulative catch-per-unit-effort of darkblotched rockfish occurs south of 38° N. lat. This observation of decreased density led to implementation of a management line at 38° N. lat. that allows slope management south of 38° N. lat. to be separated from management actions needed to rebuild darkblotched, and allows the severity of management measures between 40°10′ N. lat and 38° N. lat. to be intermediate to those for areas south of 38° N. lat and north of 40°10′ N. lat.

Darkblotched rockfish bycatch rates between 40°10′ N. lat. and 38° N. lat. at depths greater than 150–fm (274–m) are considerably lower than those for the same depth range north of 40°10′ N. lat. When bycatch rates for darkblotched rockfish between 40°10′ N. lat. and 38° N. lat. are compared to bycatch rates from depths greater than 200–fm (366–m) north of 40°10′ N. lat., the rates are similar. Given this information, the GMT does not recommend greatly increasing slope and splitnose rockfish cumulative limits as well as implementing a shallower trawl RCA, such as the trawl RCA in place south of 38° N. lat., in the area between 40°10′ N. lat. and 38° N. lat. Cumulative slope and splitnose rockfish limits on the order of 20,000 lb (9,072 kg) per month could likely be allowed if the seaward trawl RCA boundary approximated the 200–fm (366–m) depth contour. However, availability of slope and splitnose rockfish is limited at depths greater than 200–fm (366–m). Alternatively, slope and splitnose rockfish cumulative limits of 4,000 lb (1,814 kg) per month could be used in conjunction with a seaward trawl RCA boundary approximating the 150–fm (274–m) depth contour. The Pacific Council continues to recommend management measures for this area that are intermediate to those used in the areas north of 40°10′ N. lat. and south

of 38° N. lat. After feedback from the Pacific Council's Groundfish Advisory Panel and the trawl industry, the Pacific Council recommended minor adjustments to cumulative limits and the position of the trawl RCA. NMFS concurs with this recommendation; therefore, slope and splitnose rockfish cumulative limits will be increased from 4,000 (1,814 kg) per 2 months to 4,000 lb (1,814 kg) per month and the seaward trawl RCA boundary will approximate the 150–fm (274–m) depth contour rather than the 200–fm (366–m) depth contour for the area between 40°10′ N. lat. and 38° N. lat. during January and February. This regulatory change is expected to allow trawl fisheries in this area to access more abundant slope rockfish species while still maintaining a low incidental catch of darkblotched rockfish.

Lingcod

The GMT reviewed available catch and discard information pertaining to lingcod in the limited entry bottom trawl fishery. Lingcod has rebuilt quickly in recent years and is being caught in greater numbers in a range of fisheries coastwide. WCGOP data shows that there is considerable discard of lingcod in the limited entry bottom trawl fishery and suggests that allowing increased retention of lingcod may reduce discard. In 2005, north of 40°10′ N. lat., the lingcod selective flatfish trawl limit was 800 lb (363 kg) per 2 months for January through April and September through December, while it was 1,000 lb (454 kg) per 2 months for May through July. The lingcod large and small footrope limits for 2005 were 500 lb (227 kg) per 2 months. South of 40°10′ N. lat., the lingcod small footrope limit was 800 lb (363 kg) per 2 months for January through April and September through December and was 1,000 lb (454 kg) per 2 months for May through July. The lingcod midwater limit south of 40°10′ N. lat. was 500 lb (227 kg) per 2 months. In 2005, the lingcod large footrope limits were the same north and south of 40°10′ N. lat. While a substantial increase in lingcod cumulative limits may encourage targeting of lingcod and additional bycatch of overfished species (which tend to reside in areas of similar rocky habitat), the Pacific Council believed that a modest increase in lingcod retention could be allowed without negatively affecting lingcod or co-occurring overfished species. In 2004 and 2005, lingcod harvest has been well under its rebuilding OY (by more than 100 mt) and these cumulative limit increases are not projected to affect total lingcod mortality but instead change lingcod discard into landings. Therefore, the Pacific Council recommended that lingcod cumulative limits in the limited entry trawl fishery be increased to 600 lb (272 kg) per month coastwide for all gear types during January and February. NMFS concurs with this recommendation and is implementing this adjustment with this inseason action.

Limited Entry Fixed Gear and Open Access Fisheries in 2006

Limited Entry Fixed Gear and Open Access Sablefish Limits North of 36° N. lat.

In recent years, the sablefish daily trip limit (DTL) fishery north of 36° N. lat. has caught substantially less than its allocation. Therefore, the GMT believes that some liberalization of sablefish DTL cumulative limits is warranted. In 2005, the sablefish limited entry and open access DTL limits for January through September were 300 lb (136 kg) per day, or 1 landing per week up to 900 lb (408 kg), not to exceed 3,600 lb (1,633 kg) per 2 months. These sablefish DTL cumulative limits were increased for October through December to 500 lb (227 kg) per day, or 1 landing per week up to 1,500 lb (680 kg), not to exceed 9,000 lb (4,082 kg) per 2 months. The GMT is concerned with the lack of effort controls in this fishery and recommended a cautious approach to increasing its cumulative sablefish limits. The Pacific Council considered two options for increasing sablefish DTL limits. The first option maintained the previously scheduled daily limit of 300 lb (136 kg) per day, increased the weekly limit to 1,000 lb (454 kg), and increased the 2–month limit to 5,000 lb (2,268 kg). The second option increased the daily limit to 400 lb (181 kg), increased the weekly limit to 1,200 lb (544 kg), and increased the 2–month limit to 4,800 lb (2,177 kg). Because radical changes in effort for this fishery have historically been driven by changes in the daily and weekly limit, there is a greater risk of needing to restrict the fishery later in the year associated with the second option. Total catch in the sablefish DTL fishery can be managed under either option, but restricting the fishery later in the year may result in an inequitable distribution of catch and revenues because this fishery starts earlier in southern areas than in northern areas. Therefore, the Pacific Council recommended and NMFS is implementing sablefish limited entry fixed gear and open access cumulative limits of 300 lb (136 kg) per day, or 1 landing per week up to 1,000 lb (454 kg), not to exceed 5,000 lb (2,268 kg) per 2 months for the area north of 36° N. lat.

Shelf, Shortbelly, and Widow Rockfish South of 34°27′ N. lat.

At its most recent meeting, the Pacific Council also considered a request to increase shelf rockfish, shortbelly, and widow rockfish cumulative limits from 2,000 lb (907 kg) per 2 months to 3,000 lb (1,361 kg) per 2 months for limited entry fixed gear and from 500 lb (227 kg) per 2 months to 750 lb (340 kg) per 2 months for open access fixed gear. In 2005, these cumulative limit increases were implemented inseason for July through December. After reviewing the GMT's analysis of landings during 2005, the Pacific Council determined that the requested increase could be accommodated at the start of 2006. Therefore, the Pacific Council recommended and NMFS is implementing a shelf, shortbelly, and widow rockfish limited entry cumulative limit of 3,000 lb (1,361 kg) per 2 months and an open access cumulative limit of 750 lb (340 kg) per 2 months for the area south of 34°27′ N. lat.

Minor Nearshore and Black Rockfish between 40°10' N. lat. and 42° N. lat.

In 2005, the minor nearshore and black rockfish limited entry fixed gear and open access limits were increased inseason from 5,000 lb (2,268 kg) per 2 months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish, to 6,000 lb (2,722 kg) per 2 months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish, for July through December. As with the previously discussed adjustments to cumulative limits, the Pacific Council received a request to continue these 2005 inseason adjustments into 2006. A review of 2005 PacFIN data revealed no higher than anticipated catch of black rockfish, particularly with respect to black rockfish state harvest guidelines and commercial/recreational catch sharing. Therefore, the Pacific Council recommended and NMFS is implementing the minor nearshore and black rockfish limited entry fixed gear and open access cumulative limit of 6,000 lb (2,722 kg) per 2 months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish.

Recreational Groundfish Fisheries in 2006

Washington's Recreational Groundfish Fishery

The Washington Department of Fish and Wildlife (WDFW) took inseason action in August 2005 to close the Washington recreational bottomfish fisheries seaward of the recreational RCA, a line approximating the 30–fm (55–m) depth contour north of Leadbetter Pt. (46°38.17' N. lat.), WA, as the canary and yelloweye rockfish catches were approaching the state's recreational harvest targets for those species. NMFS took conforming action through the inseason action published in the **Federal Register** on October 5, 2005 (70 FR 58066). As the state recreational harvest targets are annual targets that are used to stay within joint WA/OR annual harvest guidelines, the Pacific Council recommended that the prohibition on fishing seaward of a boundary line approximating the 30–fm (55–m) depth contour be removed for the 2006 Washington recreational fishery, beginning January 1, 2006, but remain available as an option for inseason action in 2006 should the canary or yelloweye rockfish harvest target be approached.

Therefore, the Pacific Council recommended and NMFS is removing the prohibition on fishing seaward of the 30–fm (55–m) boundary line between the U.S./Canada border and 46°38.17' N. lat. (Leadbetter Point, WA) and is maintaining the availability of that boundary for inseason management in 2006.

Oregon's Recreational Groundfish Fishery

In addition to other bag limit reductions in 2005, the Oregon Department of Fish and Wildlife (ODFW) took inseason action in July 2005 to reduce the daily recreational marine fish bag limit from eight fish to five fish to slow the harvest of black rockfish. ODFW took additional action in August 2005 to prohibit retention of cabezon in the recreational ocean boat fishery, due to attainment of the annual state harvest guideline for cabezon. NMFS took conforming action on both of these items through the inseason action published in the **Federal Register** on October 5, 2005 (70 FR 58066). The Federal and state harvest guidelines are set on an annual basis, and the inseason actions taken in 2005 were in response to attainment of harvest guidelines set for the 2005 fishing year. The Pacific Council recommended that the recreational bag limit regulations that were in place in January 2005 be implemented in January 2006 to allow fisheries access to available harvest. In March 2005, NMFS published an inseason action (70 FR 16145, March 30, 2005) which, in part, revised the Federal marine fish species list for Oregon to match the list used in Oregon state regulation. Therefore, in addition to the wording in the January 2005 regulations, NMFS will include the revised species list in the 2006 Oregon recreational language. ODFW anticipates requesting Federal inseason action in March 2006, pending Oregon Department of Fish and Wildlife Commission approval of regulations governing the 2006 recreational fishery.

Therefore, the Pacific Council recommended and NMFS is implementing recreational groundfish fishery regulations off of Oregon as they read at the beginning of 2005, with the exception that NMFS is maintaining the revised species list as published in the **Federal Register** on March 30, 2005 (70 FR 16145), so that it is clear that Oregon's marine fish bag limit excludes salmonids, hybrid bass, and offshore pelagic species.

Classification

These actions are authorized by the FMP and implementing regulations and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment, as notice and comment would be impracticable and contrary to the public interest. The data upon which these recommendations were based were provided to the Pacific Council, and the Pacific Council made its recommendations at its October 30 - November 4, 2005, meeting in San Diego, CA. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect, December 1, 2005, as explained below. For the actions in this notice, prior notice and opportunity for comment would be impracticable and contrary to the public interest because affording the time necessary for prior notice and opportunity for public comment would impede the Agency's function of managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document include changes to the commercial and recreational groundfish fisheries. As of October 2005, the total catch (landing plus discard) of petrale sole had exceeded its 2005 ABC/OY. Changes to the limited entry trawl fisheries must be implemented in a timely manner by December 1, 2005, to curtail additional catch of petrale sole. Changes to management measures for recreational fisheries off Oregon and California need to be implemented as soon as possible in order to conform Federal and state recreational regulations and provide recreational fishing opportunities. Inseason adjustments for commercial and recreational fisheries for January and February of 2006 need to be implemented in a timely manner to protect overfished groundfish species while keeping the harvest of other groundfish species within the harvest levels projected for 2006. For some species, such as Dover sole, thornyheads, sablefish, slope and splitnose rockfish, shelf and shortbelly rockfish, nearshore and black rockfish, and lingcod, cumulative limits must be raised in a timely manner to allow fisheries access to healthy stocks, when possible, or to reduce discard. For other species, such as petrale sole, cumulative limits must be lowered to keep harvest within OYs and ensure year round fisheries. For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3) for all actions taken in this action.

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: November 29, 2005.

Anne M. Lange,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.384, paragraphs (c)(1)(i)(B), (c)(2)(i) and (iii), and (c)(3)(i)(A)(2) are revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) *Recreational Rockfish Conservation Area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Washington, if recreational fishing for all groundfish is prohibited seaward of a boundary line approximating the 30–fm (55–m) depth contour, a notification will be published in the **Federal Register** inseason pursuant to § 660.370(c). Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in § 660.391.

* * * * *

(2) * * *

(i) *Recreational Groundfish Conservation Areas off Oregon.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or GCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from June 1 through September 30, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40–fm (73–m) depth contour. From December 1 through December 31, 2005, recreational fishing for groundfish in the ocean boat fishery is prohibited shoreward of a recreational RCA boundary line approximating the 40–fm (73–m) depth contour (i.e., shore-based fisheries (angling from jetties, beaches, rock formations, or piers, and divers originating from shore) are open). Coordinates for the boundary line approximating the 40–fm (73–m) depth contour are listed at § 660.391. Recreational fishing for all groundfish may be prohibited inseason seaward of the 20–fm (37–m) depth contour or seaward of a boundary line approximating the 30–fm (55–m) depth contour. If the closure seaward of the 20–fm (37–m) depth contour or a boundary line approximating the 30–fm (55–m) depth contour is implemented inseason, a document will be published in the **Federal Register** pursuant to § 660.370(c). Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed at § 660.391.

* * * * *

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 10 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm) and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited. From October 18, 2005, through December 31, 2005, taking and retaining black rockfish in the ocean boat fishery is prohibited.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*2*) *Between 40°10′ N. lat. and 36° N. lat.*, recreational fishing for all groundfish (except ''other flatfish'') is prohibited seaward of the 20–fm (37–m) depth contour along the mainland coast and along islands and offshore seamounts from July 1 through December 31; and is closed entirely from January 1 through June 30 (i.e., prohibited seaward of the shoreline). Closures around the Farallon Islands (see paragraph (c)(3)(i)(C) of this section) and Cordell Banks (see paragraph (c)(3)(i)(D) of this section) also apply in this area.

* * * * *

■ 3. In part 660, subpart G, Tables 3 (both North and South), Tables 4 (both North and South) and Tables 5 (both North and South) are revised to read as follows:

BILLING CODE 3510–22–S

Table 3 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 112005

		JAN	FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]: North of 40°10' N. lat.		75 fm - modified 200 fm [7/]		100 fm - 200 fm			shoreline - 250 fm	
Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.								
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).								
State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.								
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	2,000 lb/ month		4,000 lb/ 2 months				CLOSED
2	**Pacific ocean perch**	1,500 lb/ month		3,000 lb/ 2 months				
3	**DTS complex**							
4	Sablefish							
5	large & small footrope gear	7,000 lb/ month		9,500 lb/ 2 months	17,000 lb/ 2 months	18,000 lb/ 2 months		11,000 lb/ 2 months
6	selective flatfish trawl gear	2,500 lb/ month		10,000 lb/ 2 months		15,000 lb/ 2 months		11,000 lb/ 2 months
7	multiple bottom trawl gear [8/]	2,500 lb/ month		9,500 lb/ 2 months	10,000 lb/ 2 months	15,000 lb/ 2 months		11,000 lb/ 2 months
8	Longspine thornyhead							
9	large & small footrope gear	7,500 lb/ month		15,000 lb/ 2 months	23,000 lb/ 2 months			7,000 lb/ 2 months
10	selective flatfish trawl gear	1,500 lb/ month		1,000 lb/ 2 months		8,000 lb/ 2 months		7,000 lb/ 2 months
11	multiple bottom trawl gear [8/]	1,500 lb/ month		1,000 lb/ 2 months		8,000 lb/ 2 months		7,000 lb/ 2 months
12	Shortspine thornyhead							
13	large & small footrope gear	2,000 lb/ month		3,500 lb/ 2 months	4,900 lb/ 2 months	5,200 lb/ 2 months		3,500 lb/ 2 months
14	selective flatfish trawl gear	1,500 lb/ month		1,000 lb/ 2 months	3,000 lb/ 2 months	4,000 lb/ 2 months		3,500 lb/ 2 months
15	multiple bottom trawl gear [8/]	1,500 lb/ month		1,000 lb/ 2 months	3,000 lb/ 2 months	4,000 lb/ 2 months		3,500 lb/ 2 months
16	Dover sole							
17	large & small footrope gear	25,000 lb/ month		69,000 lb/ 2 months	30,000 lb/ 2 months		35,000 lb/ 2 months	20,000 lb/ 2 months
18	selective flatfish trawl gear	10,000 lb/ month		35,000 lb/ 2 months	35,000 lb/ 2 months			20,000 lb/ 2 months
19	multiple bottom trawl gear [8/]	10,000 lb/ month		35,000 lb/ 2 months	30,000 lb/ 2 months		35,000 lb/ 2 months	20,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

20	**Flatfish** (except Dover sole)					
21	Other flatfish [3/], English sole & Petrale sole					
22	large & small footrope gear for Other flatfish[3/] & English sole	55,000 lb/ month	110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 40,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, retention of petrale sole is prohibited.
23	large & small footrope gear for Petrale sole	30,000 lb/ month				
24	selective flatfish trawl gear	Other flatfish[3/] and English sole: 45,000 lb/ month Petrale sole: 12,500 lb/ month	100,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, retention of petrale sole is prohibited.
25	multiple bottom trawl gear [8/]	Other flatfish[3/] and English sole: 45,000 lb/ month Petrale sole: 12,500 lb/ month	100,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, retention of petrale sole is prohibited.
26	Arrowtooth flounder					
27	large & small footrope gear	50,000 lb/ month	150,000 lb/ 2 months		50,000 lb/ 2 months	
28	selective flatfish trawl gear	40,000 lb/ month	70,000 lb/ 2 months		50,000 lb/ 2 months	
29	multiple bottom trawl gear [8/]	40,000 lb/ month	70,000 lb/ 2 months		50,000 lb/ 2 months	
30	**Whiting**					
31	midwater trawl	Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED				
32	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip -- After the primary whiting season: 10,000 lb/trip				
33	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**					
34	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED				
35	large & small footrope gear	150 lb/ month	300 lb/ 2 months			
36	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month	
37	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month	

TABLE 3 (North) con't

Table 3 (North). Continued

38	**Canary rockfish**					
39	large & small footrope gear	CLOSED				
40	selective flatfish trawl gear	100 lb/ month		300 lb/ month		100 lb/ month
41	multiple bottom trawl gear [8/]	CLOSED				
42	**Yellowtail**					
43	midwater trawl	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED				
44	large & small footrope gear	150 lb/ month	300 lb/ 2 months			
45	selective flatfish trawl gear	1,000 lb/ month	2,000 lb/ 2 months			
46	multiple bottom trawl gear [8/]	150 lb/ month	300 lb/ 2 months			
47	**Minor nearshore rockfish & Black rockfish**					
48	large & small footrope gear	CLOSED				
49	selective flatfish trawl gear	300 lb/ month				
50	multiple bottom trawl gear [8/]	CLOSED				
51	**Lingcod** [4/]					
52	large & small footrope gear	600 lb/ month	500 lb/ 2 months			
53	selective flatfish trawl gear	600 lb/ month	800 lb/ 2 months	1,000 lb/ 2 months		800 lb/ 2 months
54	multiple bottom trawl gear [8/]	600 lb/ month	500 lb/ 2 months			
55	**Other Fish** [5/] **& Pacific cod**	Not limited				

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 112005

	JAN	FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
40°10' - 38° N. lat.	75 fm - 150 fm		100 fm - 200 fm	100 fm - 150 fm		shoreline - 250 fm	
38° - 36° N. lat.	75 fm - 150 fm		100 fm - 150 fm			shoreline - 200 fm	
36° - 34°27' N. lat.	75 fm - 150 fm		100 fm - 150 fm			50 fm - 200 fm	
South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands			50 fm - 200 fm along the mainland coast; shoreline 200 fm around islands	
Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.							
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).							
State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
1 **Minor slope rockfish[2/] & Darkblotched rockfish**							
2 40°10' - 38° N. lat.	4,000 lb/ month		4,000 lb/ 2 months	8,000 lb/ 2 months	20,000 lb/ 2 months	8,000 lb/ 2 months	6,000 lb/ 2 months CLOSED
3 South of 38° N. lat.	20,000 lb/ month		40,000 lb/ 2 months				
4 **Splitnose**							
5 40°10' - 38° N. lat.	4,000 lb/ month		4,000 lb/ 2 months	8,000 lb/ 2 months	20,000 lb/ 2 months	8,000 lb/ 2 months	6,000 lb/ 2 months CLOSED
6 South of 38° N. lat.	20,000 lb/ month		40,000 lb/ 2 months				
7 **DTS complex**							
8 Sablefish	8,500 lb/ month		14,000 lb/ 2 months		16,000 lb/ 2 months		9,000 lb/ 2 months
9 Longspine thornyhead	9,500 lb / month		19,000 lb / 2 months				11,000 lb/ 2 months
10 Shortspine thornyhead	2,450 lb/ month		4,200 lb/ 2 months		4,600 lb/ 2 months		3,500 lb/ 2 months
11 Dover sole	25,000 lb/ month		50,000 lb/ 2 months	40,000 lb/ 2 months			30,000 lb/ 2 months
12 **Flatfish** (except Dover sole)							
13 Other flatfish[3/] & English sole							
14 40°10' - 38° N. lat.	55,000 lb/ month		Other flatfish, English sole & Petrale sole: 110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole. **South of 38° N. lat. during October, retention of petrale sole is prohibited.**				30,000 lb/ 2 months
15 South of 38° N. lat.							40,000 lb/ 2 months
16 Petrale sole	30,000 lb/ month						2,000 lb/ 2 months CLOSED

TABLE 3 (South)

Table 3 (South). Continued

17	Arrowtooth flounder					TABLE 3 (South) con't
18	40°10' - 38° N. lat.	5,000 lb/ month	10,000 lb/ 2 months		10,000 lb/ 2 months	
19	South of 38° N. lat.				5,000 lb/ 2 months	
20	**Whiting**					
21	midwater trawl	Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED				
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip -- After the primary whiting season: 10,000 lb/trip				
23	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**					
24	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month				
25	large footrope or midwater trawl for Chilipepper	1,000 lb/ month	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months	
26	large footrope or midwater trawl for Widow & Yelloweye	CLOSED				
27	small footrope trawl	300 lb/ month				
28	**Bocaccio**					
29	large footrope or midwater trawl	150 lb/ month	300 lb/ 2 months			
30	small footrope trawl	CLOSED				
31	**Canary rockfish**					
32	large footrope or midwater trawl	CLOSED				
33	small footrope trawl	100 lb/ month		300 lb/ month	100 lb/ month	
34	**Cowcod**	CLOSED				
35	**Minor nearshore rockfish & Black rockfish**					
36	large footrope or midwater trawl	CLOSED				
37	small footrope trawl	300 lb/ month				
38	**Lingcod[4/]**					
39	large footrope or midwater trawl	600 lb/ month	500 lb/ 2 months			
40	small footrope trawl	600 lb/ month	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
41	**Other Fish[5/] & Cabezon**	Not limited				

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 112005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
2	**Pacific ocean perch**	1,800 lb/ 2 months					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months	
4	**Longspine thornyhead**	10,000 lb/ 2 months					
5	**Shortspine thornyhead**	2,000 lb/ 2 months					
6	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
7	**Arrowtooth flounder**						
8	**Petrale sole**						
9	**English sole**						
10	**Other flatfish[1/]**						
11	**Whiting**	10,000 lb/ trip					
12	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
13	**Canary rockfish**	CLOSED					
14	**Yelloweye rockfish**	CLOSED					
15	**Minor nearshore rockfish & Black rockfish**						
16	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
17	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]		6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]		
18	**Lingcod[4/]**	CLOSED		800 lb/ 2 months			CLOSED
19	**Other fish[5/] & Pacific cod**	Not limited					

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 112005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
	40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
2	**Splitnose**	40,000 lb/ 2 months					
3	**Sablefish**						
4	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months	
5	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
6	**Longspine thornyhead**	10,000 lb / 2 months					
7	**Shortspine thornyhead**	2,000 lb/ 2 months					
8	**Dover sole**	5,000 lb/ month When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
9	**Arrowtooth flounder**						
10	**Petrale sole**						
11	**English sole**						
12	**Other flatfish[1/]**						
13	**Whiting**	10,000 lb/ trip					
14	**Minor shelf rockfish[2/], Shortbelly, & Widow rockfish**						
15	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
16	South of 34°27' N. lat.	3,000 lb/ 2 months		2,000 lb/ 2 months	3,000 lb/ 2 months		
17	**Chilipepper rockfish**	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Cowcod**	CLOSED					
21	**Bocaccio**						
22	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months	300 lb/ 2 months		
23	South of 34°27' N. lat.	300 lb/ 2 months		300 lb/ 2 months			
24	**Minor nearshore rockfish & Black rockfish**						
25	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
26	Deeper nearshore						
27	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/ 2 months	500 lb/ 2 months
28	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
29	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months

TABLE 4 (South)

Table 4 (South). Continued

30	**Lingcod**[3/]	CLOSED	800 lb/ 2 months	CLOSED	
31	**Other fish**[4/] **& Cabezon**	Not limited			

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 112005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
2	**Pacific ocean perch**	100 lb/ month					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months	
4	**Thornyheads**	CLOSED					
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
6	**Arrowtooth flounder**						
7	**Petrale sole**						
8	**English sole**						
9	**Other flatfish[2/]**						
10	**Whiting**	300 lb/ month					
11	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
12	**Canary rockfish**	CLOSED					
13	**Yelloweye rockfish**	CLOSED					
14	**Minor nearshore rockfish & Black rockfish**						
15	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
16	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]		6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]		
17	**Lingcod[4/]**	CLOSED		300 lb/ month			CLOSED
18	**Other Fish[5/] & Pacific cod**	Not limited					
19	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
20	North	**Effective April 1 - October 31:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 5 (North)

Table 5 (North). Continued

21	**SALMON TROLL**		
22	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.	

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 112005

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[5/]: 40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					

See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.
See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).

State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	**Minor slope rockfish[1/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months	
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
18	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat.	750 lb/ 2 months		500 lb/ 2 months	750 lb/ 2 months		
20	**Canary rockfish**	CLOSED					
21	**Yelloweye rockfish**	CLOSED					
22	**Cowcod**	CLOSED					
23	**Bocaccio**						
24	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			
26	**Minor nearshore rockfish & Black rockfish**						
27	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
28	Deeper nearshore						
29	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/ 2 months	500 lb/ 2 months
30	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
31	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months

TABLE 5 (South)

Table 5 (South). Continued

32	**Lingcod**[3/]	CLOSED	300 lb/ month, when nearshore open	CLOSED	
33	**Other Fish**[4/] **& Cabezon**	Not limited			
34	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*				
35	South	**Effective April 1 - October 31:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.			
36	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**				
37	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut and Sea Cucumber:**				
38	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm	75 fm - 150 fm
39	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm		
40	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for Ridgeback Prawn:**				
42	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm	75 fm - 150 fm
43	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm		
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands			
45		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).			

TABLE 5 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 05–23640 Filed 11–30–05; 3:09 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 70, No. 232
Monday, December 5, 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 Parts 13, 47, 61, 91, and 183

[Docket No. FAA–2005–23156; Notice No. 05–15]

RIN 2120–AD16

Drug Enforcement Assistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing an NPRM to revise certain requirements concerning registration of aircraft, certification of pilots, and penalties for registration and certification violations. We are withdrawing the document because the relief that the NPRM would have provided has been achieved by other means or is addressed by an NPRM we plan to publish in the **Federal Register** in the near future.

FOR FURTHER INFORMATION CONTACT: Mark D. Lash, Civil Aviation Registry, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169, telephone (405) 954–4331.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1990, the FAA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (55 FR 9270). The NPRM proposed changes to certain requirements concerning registration of aircraft, certification of pilots, and penalties for registration and certification violations. The NPRM also announced non-rulemaking procedural changes. We intended the changes to correct deficiencies in our systems and procedures identified in the FAA Drug Enforcement Assistance Act of 1988 (Pub. L. 100–690) (hereafter, ''the Act''). The Act amended FAA's authorizing legislation (49 U.S.C. 40101 *et seq.*) to—

- Declare that it is FAA policy to assist law enforcement agencies in the enforcement of laws that regulate controlled substances, to the extent consistent with aviation safety;
- Modify the aircraft registration system to more effectively serve the needs of buyers and sellers of aircraft, drug enforcement officials, and other users of the system;
- Modify the pilot certification system to more effectively serve the needs of pilots and drug enforcement officials;
- Modify the system for processing major repair and alterations of fuel tanks and fuel systems on aircraft, to more effectively serve users of the system, including drug enforcement officials;
- Establish and collect the fees necessary to cover the costs of issuing aircraft registration certificates, issuing airman certificates for pilots, and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft;
- Pursue civil actions and assess civil penalties for violations of the regulations governing registering aircraft and recording aircraft security documents; and
- Create criminal penalties for forgery of airman certificates, false marking of aircraft, and other aircraft registration violations and to make it unlawful for any person to knowingly and willingly operate an aircraft in violation of any requirement for display of navigation or anti-collision lights.

The comment period closed on May 11, 1990. We received 373 comments, very few of which expressed support for the proposed changes. For the most part, commenters believed that the proposed changes would only impose burdens on law-abiding citizens, while criminals would simply circumvent them. As a result, FAA decided to delay the rulemaking process to assess whether specific technological improvements to the Civil Aviation Registry could meet the intent of the Act. As described in more detail below, we believe we have now fulfilled the requirements of the Act, with certain exceptions, through changes to systems and procedures used by the FAA Civil Aviation Registry (hereafter, the Registry). For this reason, we are withdrawing the 1990 NPRM in its entirety.

To further address our obligations under the Act, we plan to publish a new NPRM in the **Federal Register** in the near future. The NPRM will address the requirements of the Act not put in place through changes to the Civil Aviation Registry, with one exception.

The Act specified that regulations prescribed under Section 44111 shall require that each individual listed in an application for registration of an aircraft provide with the application the individual driver's license number and that each person (not an individual) listed in an application for registration of an aircraft provide with the application the person's taxpayer identifying number.

The FAA has determined that implementing that requirement would be detrimental to users of the aircraft records and potentially to the aircraft owners. At this time aircraft records are available to all parties with a need or desire to examine them in the pursuit of aviation safety, national security, and the purchase or sale of aircraft. If privacy information like a driver's license number or taxpayer identification number were included with documents that are a part of the aircraft record, then access to aircraft record would have to be restricted.

In addition, a vetting process would have to be set up to ensure that the driver's license number and taxpayer identification number being provided were in fact accurate and valid. This would require a face-to-face meeting between those parties wishing to register aircraft and an entity that could provide verification that the identification provided was in fact genuine. This would increase the cost and time needed for aircraft registration, creating an unnecessary burden on aircraft owners and the government.

With the changes made to the aircraft registration system since passage of the Act, the FAA believes that law enforcement organizations have much improved information with which to carry out their responsibilities and that implementation of this requirement is not necessary.

Reason for Withdrawal

We are withdrawing the NPRM published in the **Federal Register** on March 12, 1990 (55 FR 9270) because the relief that would have been provided by the NPRM has been achieved by other means. The following paragraphs list the deficiencies in, and abuses of, the FAA's systems for

registering pilots and aircraft identified in the FAA Drug Enforcement Assistance Act of 1988 (Pub. L. 100–690) and the actions the FAA has taken to address them.

Section 44703(g) Airman Certificates

(A) The Use of Fictitious Names and Addresses by Applicants for Those Certificates

At time of application for certification, airmen must show proof of identity to the certifying official. *See* General Aviation Inspector's Handbook, FAA Order 8700.1, vol. 2, Chap. 1, section 4. The proof of identity must include a photograph. The FAA records the type of identification used on the airmen application form. This information is available to law enforcement for follow-up. Airmen also must show proof of identity when applying for medical certification.

In 1995, the FAA began using a software product that validates that an address is in a standardized form and is within a range of valid addresses. The FAA also purchased and is testing a software product that confirms whether a specific address is a valid delivery point for the U.S. Postal Service. Beginning in 2004, the airmen database is periodically checked and information on potentially nonexistent addresses is made available to the FAA Law Enforcement Assistance Program.

(B) The Use of Stolen or Fraudulent Identification in Applying for Those Certificates

When applying for an airman certificate, the applicant must present photo identification. This requirement mitigates the use of stolen identification. The FAA collects information on the identification document used in applying for airmen certificates. *See, for example,* FAA form number 8710–1. That information is readily available to law enforcement agencies for the purpose of determining its validity.

(C) The Use by an Applicant of a Post Office Box or ''Mail Drop'' as a Return Address To Evade Identification of the Applicant's Address

In 1989, the FAA stopped accepting a post office box as a residence address. An applicant must provide a physical address. However, the applicant may specify a post office box as the preferred mailing address. In that case, the FAA keeps both addresses in the airman's record. If the physical address is listed as General Delivery, Rural Route, or Star Route, the airman must provide directions, or a map, for locating the residence.

(D) The Use of Counterfeit and Stolen Airman Certificates by Pilots

In July 2003, the FAA began issuing airmen certificates that incorporate a number of security features. The certificates are made of high quality PVC plastic media card stock, much improved over the old paper stock. They include extensive micro-printing, a hologram, and an ultraviolet layer that contains certain words and phrases. This new certificate greatly reduces the ability to create counterfeit reproductions. This issue will also be addressed in an NPRM we plan to publish in the **Federal Register** in the near future.

In addition, certificates that are reported stolen to the FAA are marked as such in the airmen database. This information is available to law enforcement organizations.

(E) The Absence of Information About Physical Characteristics of Holders of Those Certificates

In October 2002, the FAA adopted new regulations requiring that airmen carry photo identification acceptable to the FAA when exercising the privileges of a pilot certificate. In addition, the airman must present photo identification when requested to do so by the FAA, an authorized representative of the NTSB or the TSA, or a law enforcement officer. *See* 67 FR 65858, October 28, 2002.

Section 44111(c)(3) Modifications in Registration and Recordation System for Aircraft Not Providing Air Transportation

(A) The Registration of Aircraft to Fictitious Persons

Law enforcement organizations have the resources and responsibility to identify fictitious persons. One of the deficiencies that existed at the time of this legislation was that law enforcement agencies did not have timely access to FAA information. The FAA now has in place a system that provides law enforcement agencies, through the FAA's Law Enforcement Assistance Program, access to both its aircraft database, which contains the registration and airworthiness status of the aircraft and the names and addresses of the registered owners, and over 25 million documents containing registration and airworthiness information. The documents are in digital format and are available seven days a week, 24 hours a day within minutes of requesting them.

(B) The Use of False or Nonexistent Addresses by Persons Registering Aircraft

In 1995, the FAA began using a software product that validates that an address is in a standardized form and that it is within a range of valid addresses. The FAA has also purchased and is testing a software product that confirms whether a specific address is a valid delivery point for the U.S. Postal Service. Beginning in 2004, the aircraft registration database is periodically checked and a file of potentially nonexistent addresses is made available to the FAA Law Enforcement Assistance Program.

(C) The Use by a Person Registering an Aircraft of a Post Office Box or ''Mail Drop'' as a Return Address To Evade Identification of the Person's Address

On October 20, 1994, the FAA notified the public that we no longer accept aircraft registration applications unless a physical location or physical address is shown in the address portion of the form. *See* 59 FR 53013. On October 17, 1996, the FAA began requesting physical addresses for those aircraft previously registered for which records indicated only a post office box or mail drop address.

(D) The Registration of Aircraft to Entities Established To Facilitate Unlawful Activities

Law enforcement organizations have the resources and responsibility to identify such entities. One of the deficiencies that existed at the time of this legislation was that law enforcement agencies did not have timely access to FAA information. The FAA now has in place a system that provides law enforcement agencies, through the FAA's Law Enforcement Assistance Program, access to its aircraft database and all 25 million documents associated with the aircraft's registration and airworthiness information. The actual documents are all in digital format and are available seven days a week, 24 hours a day within minutes of requesting them.

(E) The Submission of Names of Individuals on Applications for Registration of Aircraft That Are Not Identifiable

The current application for registration contains instructions indicating the applicant should type or print the name below the signature(s). As of June 2004, the FAA no longer accepts applications for aircraft registration without a printed or typed name below the signature(s). This issue will also addressed in the NPRM we

plan to publish in the **Federal Register** in the near future.

(F) The Ability To Make Frequent Legal Changes in the Registration Markings Assigned to Aircraft

In 1990, the FAA started capturing the serial number/registration number history in a computer database. This information is available on-line to FAA and the law enforcement community. It allows security and law enforcement to track any unusual patterns for a specific aircraft. They determine the frequency of changes that would trigger further investigation on their part.

(G) The Use of False Registration Markings on Aircraft

All information concerning registration markings, called ''N numbers'' is available through the Registry's Web site, as well as through the El Paso Intelligence Center. This Center is comprised of the Drug Enforcement Administration, U.S. Customs Service, Transportation Security Administration, FAA, and other law enforcement officials who work aircraft and airmen issues. They have direct access to Registry databases and also work through the FAA Law Enforcement Assistance Program on law enforcement issues. If an individual uses a reserved N number not assigned to their aircraft, field personnel can quickly make that determination through the use of the online information, which is now available seven days a week, 24 hours a day. The FAA updates this information on the Civil Aviation Registry's Web site on a daily basis.

When an aircraft registration is cancelled (for example, when an aircraft is destroyed, scrapped, or exported), the FAA places the registration number on hold for two years and does not assign the number to another aircraft during that period. This procedure has been in place since October 1990 at the request of the law enforcement community. The Registry is now considering a request from law enforcement to increase this timeframe.

(H) The Illegal Use of ''Reserved'' Registration Markings on Aircraft

All information concerning reserved registration markings, called ''N numbers'' is available through the Registry's Web site, as well as through the El Paso Intelligence Center. This Center is comprised of the Drug Enforcement Administration, U.S. Customs Service, Transportation Security Administration, FAA, and other law enforcement officials who work aircraft and airmen issues. They have direct access to Registry databases and also work through the FAA Law Enforcement Assistance Program on law enforcement issues. If an individual uses a reserved N number not assigned to their aircraft, field personnel can quickly make that determination through the use of the online information, which is now available seven days a week, 24 hours a day. The FAA updates this information on the Civil Aviation Registry's Web site on a daily basis.

(I) The Large Number of Aircraft Identified as ''Sale Reported''

A status of ''Registration Pending'' was established on October 3, 1990, to distinguish between those records where an actual attempt to register the aircraft had been made (registration pending) from those that had only been reported as sold (sale reported). The registration pending category provides additional information to FAA field and law enforcement personnel to include the date of the application and the name and address of the applicant to help in verification of the pink copy used for temporary operation.

For approximately three years, the Registry has dedicated examination resources to this effort and has reduced the number of aircraft in the sale reported status by over 2,000 aircraft. In addition, the FAA has changed the registration status of aircraft identified as ''sale-reported'' from ''Valid'' to ''In Question'' in its database to alert FAA field personnel and law enforcement agencies to potential problems with the registration. The FAA is currently working with the Transportation Security Administration and aviation industry groups to further improve the registration status information on all civil aircraft.

(J) The Lack of a System To Ensure Timely and Adequate Notice of the Transfer of Ownership of Aircraft

The Registry maintains a database of the status of aircraft registration that is accessible through its Web site and is updated daily. A document index is also available on the Web site. The document index can be used to determine if documents related to a specific aircraft have been received by the Registry, even if a permanent registration certificate has not yet been issued. The index is also updated daily. This issue will also be addressed in the NPRM we plan to publish in the **Federal Register** in the near future.

(K) The Practice of Allowing Temporary Operation and Navigation of Aircraft Without the Issuance of a Certificate of Registration

Temporary authority to operate a U.S. civil aircraft for a reasonable amount of time after a transfer of ownership is available under 14 CFR 47.31. However, before that authority is valid, § 47.31 requires each applicant to submit an aircraft registration application and an original bill of sale to the FAA.

Almost all aircraft registry records are now maintained in digital imagery instead of the prior microfiche/paper-based system. There are over 25 million pages of information available on this system. A document index, updated daily, and almost all aircraft records are now available online at the FAA Registry Web site or through a query to the FAA Law Enforcement Assistance Program.

Law enforcement personnel using the index or Law Enforcement Assistance Program can retrieve all documents associated with aircraft in a matter of minutes and determine whether an application package for the aircraft, as required by 14 CFR 47.31 has been received by the Registry. If there is any question regarding the registration status of an aircraft, online queries allow rapid access to aircraft documents in Adobe PDF format that can then be forwarded to the appropriate law enforcement organization.

Establishment of the El Paso Intelligence Center allows law enforcement comprised of the Drug Enforcement Administration, U.S. Customs Service, FAA and other law enforcement officials who work aircraft and airmen issues, centralized direct access to Registry databases through the Law Enforcement Assistance Program and the Web site. El Paso Intelligence Center personnel have access to real-time data.

Current regulations (14 CFR 47.41) require that when, among other instances, an aircraft is sold, the seller must notify the FAA's Aircraft Registry of the sale and the certificate of registration be returned. The aircraft is then flagged with a ''Sale Reported'' notation until such time that an application package is received and processed for the new owner. Any member of the public or law enforcement can check the registration records of a particular aircraft through the Registry Web site to determine if that aircraft is flagged as ''Sale Reported.'' This information is updated daily.

FAA believes that together, these existing regulations and added access to

aircraft records for law enforcement personnel address Congress' concern with the practice of allowing temporary operating authority prior to issuance of a certificate of aircraft registration.

Section 44713(d) Inspection and Maintenance

(A) The Lack of a Special Identification Feature To Allow the Forms To Be Distinguished Easily From Other Major Repair and Alteration Forms

The FAA issued an Action Notice (FAA Notice A8600.1) requiring each FAA Flight Standards District Office to review any Major Repair and Alteration Form (form no. 337) received and to send any form 337 involving a fuel tank system alteration or modification to a special section in the Registry by first class mail within 24 hours of receipt. This section has its own post office box number. This procedure highlights forms related to major repairs or alterations to fuel tanks and fuel systems from all other form 337s sent to the FAA.

(B) The Excessive Period of Time Required To Receive the Forms at the Airmen and Aircraft Registry of the Administration

As discussed above, FAA Notice A8600.1 requires each FAA Flight Standards District Office to review any Major Repair and Alteration Form (form no. 337) received and to send any form that involved a fuel tank system alteration or modification to a special section in the Registry by first class mail within 24 hours of receipt.

(C) The Backlog of Forms Waiting for Processing at the Registry

The Registry has eliminated the backlog for processing forms for major repairs or alterations to fuel tanks and fuel systems. All completed forms have been associated with the appropriate aircraft record.

(D) The Lack of Ready Access by Law Enforcement Officials to Information Contained on the Forms

The Registry enters these forms in the FAA aircraft database immediately upon receipt. The information is accessible to law enforcement through that database. In addition, once the form is associated with the appropriate aircraft record, the actual Major Repair and Alteration Form (form no. 337) is available electronically within minutes through the FAA's Law Enforcement Assistance Program.

Conclusion

Based on the actions described above that we have taken to address the deficiencies and abuses identified in the FAA Drug Enforcement Assistance Act, the FAA has determined that, with certain exceptions, we have satisfied the statutory requirements. The exceptions will be addressed by the NPRM we plan to publish in the **Federal Register** in the near future. Therefore, the FAA withdraws Notice No. 90–9, published at 55 FR 9270 on March 12, 1990.

Withdrawal of the NPRM does not preclude the FAA from issuing another notice on the subject matter in the future or committing the agency to any future course of action.

Issued in Washington, DC, on November 25, 2005.

John M. Allen,

Deputy Director, Flight Standards Service.

[FR Doc. E5–6791 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23173; Directorate Identifier 2005–NM–190–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 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 all Short Brothers Model SD3 airplanes. This proposed AD would require installing additional fuel tank bonding jumpers, performing an in-place resistance check of the float switches, inspecting certain internal components of the fuel tanks, and performing related corrective actions if necessary. This proposed AD would also require revisions to the airworthiness limitations section of the Instructions for Continued Airworthiness, and to the airplane flight manual procedures for operation during icing conditions and fuel system failures. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent ignition sources inside the fuel tanks, which could lead to fire or explosion.

DATES: We must receive comments on this proposed AD by January 4, 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 Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, 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 ''FAA–2005–23173; Directorate Identifier 2005–NM–190–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 FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all Short Brothers Model SD3 airplanes. The CAA advises that ignition sources may develop inside fuel tanks due to insufficient grounding. This condition, if not corrected, could result in ignition sources occurring inside the fuel tanks, which could lead to fire or explosion.

Relevant Service Information

Short Brothers has issued Service Bulletins SD3 SHERPA–28–2, SD360 SHERPA–28–3, SD330–28–37, and SD360–28–23; all dated June 2004. The service bulletins describe procedures for installing additional bonding jumpers between the vent pipes of both fuel tanks and the airplane structure; for performing an in-place resistance check of the fuel tank float switches; for inspecting the condition of certain sensor cables and cable supports inside the fuel tanks; for inspecting the integrity of the existing bonding of certain vent pipes inside the forward fuel tank; and for performing applicable corrective actions. Corrective actions include replacing defective float switches with new, reconditioned, or serviceable float switches, and repairing damaged sensor cables, cable supports, and existing vent pipe bonding.

Short Brothers has issued Advance Amendment Bulletin 1/2004, dated July 13, 2004, applicable to Shorts airplane flight manuals having Doc. Nos. SB.4.3, SB.4.6, SB.4.8, SB.5.2, SB.6.2, SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SBH.3.9. The advance amendment bulletin describes revisions needed to meet the requirements of FAA SFAR 88 and/or CAA Airworthiness Notice AN55; the revisions affect sections of the flight manuals applicable to operation during icing conditions and fuel system failures.

Short Brothers has issued temporary revisions (TR) to the airworthiness limitations section of the aircraft maintenance manuals (AMM) of the affected airplanes, as shown in the following table. The TRs address airworthiness limitations to certain components of the fuel tank system installations.

AMM Temporary Revisions

Airplane model	Temporary revision	Dated	To AMM
SD3–30	TR330–AMM–14	June 21, 2004	SD3–30 AMM.
SD3–60	TR360–AMM–33	July 27, 2004	SD3–60 AMM.
SD3–60 SHERPA	TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–15	July 28, 2004	SD3–SHERPA AMM.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2004–0021, dated August 25, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in the United Kingdom 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 FCAA has kept the FAA informed of the situation described above. We have examined the CAA'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 Between the Proposed AD and Service Information.''

Difference Between Proposed AD and Service Information

The service bulletins specify to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the CAA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the CAA approve would be acceptable for compliance with this proposed AD.

Clarification of Inspection Terminology

In this proposed AD, the ''visual inspection'' specified in the Shorts service bulletins is referred to as a ''general visual inspection.'' We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 54 airplanes of U.S. registry. The average labor rate is estimated to be $65 per work hour.

The proposed revisions to the AFM and AMM would take about 1 work hour per airplane. Based on these figures, the estimated cost of the proposed revisions for U.S. operators is $3,510, or $65 per airplane.

The proposed resistance check, inspections, and jumper installations, would take about 40 work hours per airplane. Required parts would cost about $10 per airplane. Based on these figures, the estimated cost of these proposed actions for U.S. operators is $140,940, or $2,610 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):

Short Brothers PLC: FAA–2005–23173; Directorate Identifier 2005–NM–190–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 4, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Shorts Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 airplanes, certificated in any category.

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

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the fuel tanks, which could lead to fire or 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.

Revision of Airplane Flight Manual (AFM)

(f) Within 30 days after the effective date of this AD, revise the Limitations and Normal Procedures sections of the AFMs as specified in Table 1 of this AD to include the information in Shorts Advance Amendment Bulletin 1/2004, ''Introduction of Changes to Meet the Requirements of FAA SFAR 88 and/or UK CAA Airworthiness Notice AN55,'' dated July 13, 2004, as specified in the advance amendment bulletin. This advance amendment bulletin addresses operation during icing conditions and fuel system failures. Operate the airplane according to the limitations and procedures in the advance amendment bulletin.

Note 2: The requirements of paragraph (f) of this AD may be done by inserting a copy of the advance amendment bulletin into the AFM. When this advance amendment

bulletin has been included in general revisions of the AFM, the general revisions may be inserted into the AFM and the advance amendment bulletin may be removed, provided the relevant information in the general revision is identical to that in the advance amendment bulletin.

TABLE 1.—AFM REVISIONS

Airplane model	AFM documents to be revised
SD3–30	SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SBH.3.9.
SD3–60	SB.4.3, SB.4.6, and SB.4.8.
SD3–60 SHERPA.	SB.5.2.
SD3–SHERPA	SB.6.2.

Revision of Airworthiness Limitation (AWL) Section

(g) Within 180 days after the effective date of this AD: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating airplane maintenance manual sections 5–20–01 and 5–20–02 as introduced by the Shorts temporary revisions (TR) specified in Table 1 of this AD into the AWL section of the AMMs for the airplane models specified in Table 1. Thereafter, except as provided by paragraph (i) of this AD, no alternative structural inspection intervals may be approved for the longitudinal skin joints in the fuselage pressure shell.

Note 3: The requirements of paragraph (g) of this AD may be done by inserting a copy of the applicable TR into the applicable AMM. When the TR has been included in general revisions of the AMM, the general revisions may be inserted in the AMM and the TR may be removed, provided the relevant information in the general revision is identical to that in the TR.

TABLE 2.—AMM TEMPORARY REVISIONS

Airplane model	Temporary revision	Dated	To AMM
SD3–30	TR330–AMM–14	June 21, 2004	SD3–30 AMM.
SD3–60	TR360–AMM–33	July 27, 2004	SD3–60 AMM.
SD3–60 SHERPA	TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–15	July 28, 2004	SD3–SHERPA AMM.

Resistance Check, Inspection, and Jumper Installation

(h) Within 180 days after the effective date of this AD: Perform the insulation resistance check, general visual inspections, and bonding jumper wire installations; in accordance with Shorts Service Bulletin SD330–28–37, SD360–28–23, SD360 SHERPA–28–3, or SD3 SHERPA–28–2; all dated June 2004; as applicable. If any defects or damage are discovered during any inspection or check required by this AD, before further flight, repair the defects or damage using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Note 4: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance (AMOCs)

(i)(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

(j) British airworthiness directive G–2004–0021, dated August 25, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on November 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23600 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23159; Directorate Identifier 2005–SW–10–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) that currently applies to Eurocopter France (ECF) Model SA 365N, N1, and AS 365N2 helicopters. That AD currently requires inspecting the main gearbox (MGB) suspension diagonal cross-member (diagonal cross-member) for cracks and replacing it with an airworthy part if any crack is found. This action proposes to require more frequent inspections of the diagonal cross-member and adding the Model SA–366G1 helicopters to the applicability. This proposal is prompted by several reports of cracks in the diagonal cross-member. The actions specified by the proposed AD are intended to prevent failure of the diagonal cross-member, pivoting of the MGB, severe vibrations, and a subsequent forced landing.

DATES: Comments must be received on or before February 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; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas

75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES.** Include the docket number ''FAA–2005–23159, Directorate Identifier 2005–SW–10–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On April 3, 1998, we issued AD 98–08–14, Amendment 39–10463 (63 FR 17676, April 10, 1998), to require inspecting each diagonal cross-member for cracks and replacing it with an airworthy diagonal cross-member if any crack is found. That action was prompted by several reports of cracks in diagonal cross-members. The requirements of that AD are intended to prevent failure of the diagonal cross-member, which could cause the MGB to pivot resulting in severe vibrations and a subsequent forced landing.

Since issuing that AD, we have determined the Model SA–366G1 helicopter should be added to the applicability because this model may contain an affected diagonal cross-member, part number (P/N) 365A38–3023–22, –23 or –24. Also, we have determined after further study and additional reports of failed diagonal cross-members that more frequent inspections of the diagonal cross-member are necessary.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS–365N, N1, N2, and SA 366 G1 helicopters. The DGAC advises of the discovery of a crack in a diagonal cross-member of the ECF Model SA 366 G1 helicopter.

ECF has issued Service Bulletin (SB) No. 05.00.37, dated May 29, 1997, for Model AS–365N, N1, and N2 helicopters. The SB specifies a periodic inspection for a crack or failure of a central branch of the MGB suspension strut pre-MOD 0763B80. ECF has also issued Alert Service Bulletin (ASB) No. 05.25, dated June 19, 2002. The ASB specifies checking the center portion of the MGB suspension cross-bar for Model AS–366G1 helicopters, with a crossbar, P/N 365A38–3023–22, –23, or –24, installed. The DGAC classified these service bulletins as mandatory and issued ADs 2003–241(A) and 1997–093–041(A) R2, both dated June 25, 2003, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would supersede AD 98–08–14 to require the following:

- For Model SA–365N and SA–365N1 helicopters, before accumulating 15,000 operating cycles; and for Model AS–365N2 and SA–366G1 helicopters, before accumulating 11,000 operating cycles:
- Inspect the diagonal cross-member for a crack in the area of the center borehole. Use a borescope with a 90-degree drive, a video assembly with optical fiber illumination, or any other appropriate device that makes it possible to visually inspect the center area of the part.
- Repeat the previous inspections at intervals not to exceed 250 operating cycles or 50 hours time-in-service, whichever occurs first.
- If a crack is found, before further flight, replace the diagonal cross-member with an airworthy diagonal cross-member.

We estimate that this proposed AD would affect 133 helicopters of U.S. registry, and would:

- Take about 1 work hour to inspect the diagonal cross-member,
- Take about 10 work hours to replace the diagonal cross-member, if necessary, at an average labor rate of $65 per work hour, and
- Cost about $6,600 to replace the part.

Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $139,990, assuming 12 inspections per year per helicopter, and assuming 5 helicopters require replacing the diagonal cross-member.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the

DMS to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10463 (63 FR 17676, April 10, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. FAA–2005–23159; Directorate Identifier 2005–SW–10–AD. Supersedes AD 98–08–14, Amendment 39–10463, Docket No. 97–SW–21–AD.

Applicability: Model SA–365N, SA–365N1, AS–365N2, and SA–366G1 helicopters with a main gearbox (MGB) suspension diagonal cross-member (diagonal cross-member) part number (P/N) 365A38–3023–20, –21, –22, –23, or –24 installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the diagonal cross-member, pivoting of the MGB, severe vibrations, and subsequent forced landing, do the following:

(a) For Model SA–365N and SA–365N1 helicopters, before accumulating 15,000 operating cycles; and for Model AS–365N2 and SA–366G1 helicopters, before accumulating 11,000 operating cycles:

(1) Inspect the diagonal cross-member for a crack in the area of the center borehole. Use a borescope with a 90-degree drive, a video assembly with optical fiber illumination, or any other appropriate device that allows you to visually inspect the center area of the part.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at intervals not to exceed 250 operating cycles or 50 hours time-in-service, whichever occurs first.

Note 1: ''Operating cycles'' are defined in the Airworthiness Limitations Section of the Master Servicing Recommendations.

(b) If a crack is found as a result of the inspections required by this AD, before further flight, replace the diagonal cross-member with an airworthy diagonal cross-member.

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

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1997–093–041(A) R2, dated June 25, 2003, and 2003–241(A), dated June 25, 2003.

Issued in Fort Worth, Texas, on November 23, 2005.

Carl F. Mittag,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–23602 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960–AG12

Nonpayment of Benefits to Fugitive Felons and Probation or Parole Violators

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: To implement section 203 of the Social Security Protection Act of 2004 (SSPA), we propose to revise our regulations on the payment of Social Security and Supplemental Security Income benefits under titles II and XVI of the Social Security Act (the Act). Section 203 requires that title II benefits will not be paid to a person who is a fugitive felon or probation or parole violator, unless good cause is shown as specified in this new law. Section 203 also added a good cause exception to the title XVI fugitive felon ineligibility provision. In addition, we propose to make other changes in our regulations, required by this legislation, such as removing the reference to high misdemeanors in the state of New Jersey. Finally, we propose to clarify our interpretation of the statutory language ''fleeing to avoid'' for the purposes of the title II and title XVI provisions.

DATES: To be sure that we consider your comments, we must receive them by February 3, 2006.

ADDRESSES: You may give us your comments by: Using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193) provided in section 1611(e)(4) of the Act that a person is ineligible for payments under title XVI for any month he or she is avoiding prosecution for a felony, is avoiding confinement for conviction of a felony, or is violating a condition of probation or parole. Prior to the enactment of the SSPA (Pub. L. 108–203) on March 2, 2004, section 1611(e)(4) of the Act also provided that

these provisions apply to high misdemeanors in the State of New Jersey. Section 203 of the SSPA provides for the nonpayment of title II benefits to fugitive felons and probation or parole violators, by amending section 202(x) of the Act. Section 203 also provides a good cause exception to the nonpayment of title II benefits and adds a good cause exception to the SSI ineligibility provision. Finally, section 203 removes the reference to New Jersey crimes known as high misdemeanors. Instead, it provides that, in jurisdictions that do not define crimes as felonies, a crime that would result in nonpayment of title II benefits to or SSI ineligibility for fugitive felons and probation or parole violators is one that is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed.

Proposed Changes

We propose to amend subpart E of part 404 and subparts B and M of part 416 of chapter III of title 20 of the Code of Federal Regulations (20 CFR) by adding a new § 404.471 and revising existing §§ 404.401, 416.202 and 416.1339. In § 404.401(d), we propose to add a new paragraph (d)(5) to the existing list of reasons for the nonpayment of benefits. The new paragraph would require nonpayment of title II benefits if a person has an outstanding arrest warrant for prosecution of a crime (or an attempt to commit a crime) that is a felony, or is avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony, or is violating a condition of Federal or State probation or parole.

In proposed § 404.471, we explain that we will not pay title II benefits to fugitive felons and probation or parole violators beginning in January 2005. We also explain that the nonpayment of benefits under title II of the Act applies in three situations. First, we will not pay benefits under title II when the person has an outstanding arrest warrant if that warrant has been in effect for more than 30 days and the warrant is for prosecution of a crime (or an attempt to commit a crime) that is a felony. We will also apply the nonpayment or ineligibility provisions of section 203 of the SSPA when an outstanding arrest warrant has been in effect for more than 30 days and the warrant is issued because a person is avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony. Finally, we will apply the nonpayment or ineligibility provisions of section 203 of the SSPA when a warrant has been in effect for more than 30 days and the warrant is issued because the person is violating a condition of Federal or State probation or parole. We also explain that in jurisdictions that do not define crimes as felonies, we will apply these provisions if the crime or attempt to commit a crime is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed. We base the requirement that the outstanding arrest warrant must be in effect for more than 30 consecutive days on the statutory 30-day requirement in section 202(x) of the Act. Section 1611(e)(1) of the Act has no such requirement; consequently, as we explain below, our corresponding rules for title XVI cases do not contain this requirement.

We also propose in §§ 404.471 and 416.1339 to establish the rules that we will apply in administering the mandatory and discretionary good cause exceptions to nonpayment of title II benefits or title XVI ineligibility.

The Act contains both mandatory and discretionary exceptions to the requirements that we not pay benefits under title II or that we will find that a person is ineligible under title XVI if he or she is a fugitive felon or probation or parole violator. Consistent with the statute, we propose that we will find mandatory good cause to pay title II benefits or to determine that a person is eligible for SSI, after January 1, 2005, in two situations. First, we will find good cause at any time a person can show or when we determine that a court or equivalent body (such as the United States Parole Commission) of competent jurisdiction has found the person not guilty of the criminal offense, has dismissed the underlying charges relating to the criminal offense, has vacated the warrant for arrest for the criminal offense, or issued any similar exonerating order or took a similar exonerating action. In applying the mandatory good cause exception, we recognize that terms used by courts or an equivalent body to describe actions taken to dispose of a warrant may vary in different jurisdictions; *e.g.*, instead of using the word ''vacated'' courts or an equivalent body may use words such as rescinded, recalled, or quashed. Second, we will also find good cause at any time a person can show or when we determine that the person was erroneously implicated in connection with the criminal offense because someone stole his or her identity, or because of mistaken identity.

Section 203 of the SSPA also gives us the discretionary authority to find good cause based on mitigating circumstances if the person establishes that the offense underlying the warrant and imposition of the probation or parole (as well as violating probation or parole) was both nonviolent and not drug-related. We consider ''violent'' crimes to be those that threaten, attempt to use, or actually use physical force against a person; *e.g.*, assault, homicide, kidnapping/abduction, robbery, and forcible sex offenses. ''Drug-related'' crimes are those involving the unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. In identifying these violent and drug-related crimes we will use selected National Crime Information Center (NCIC) codes, a list of which is published in our operating instructions.

In the SSPA's legislative history (149 Cong. Rec. S16180 (daily ed. Dec. 9, 2003)), Congress explained that we may establish good cause based on mitigating factors such as the nature and severity of the crime, the length of time that has passed since the warrant was issued, whether other crimes have been committed in the interim, and the beneficiary's mental capacity to resolve the issue. We propose to incorporate these factors into our regulations that discuss the discretionary good cause exception. We propose to exercise our discretion to find good cause to pay benefits based on mitigating circumstances after January 1, 2005, when the person contacts us within 1 year after he or she receives our title II nonpayment notice or the title XVI notice of planned action and supplies proof within 90 days of that contact that all of the following apply:

- The crime or violating the probation or parole which the warrant is based on was both nonviolent and not drug-related and, if for violating probation or parole, the original crime(s) was both nonviolent and not drug-related; and
- The person has neither been convicted of nor pled guilty to another felony crime since the date of the warrant; and
- The law enforcement agency that issued the warrant reports that it will not extradite the person for the charges on the warrant or that it will not take action on the arrest warrant.

If the first two requirements above apply but not the third, we may also find good cause if the following two criteria apply:

- The only existing warrant was issued 10 or more years ago; and
- The person's medical condition impairs his or her mental capability to resolve the warrant; or he or she is incapable of managing his or her benefits; or he or she is legally

incompetent; or we have appointed a representative payee to handle the benefits; or he or she is residing in a long-term care facility, such as a nursing home or mental treatment/care facility.

If the person does not contact us within 1 year after receipt of the title II notice of nonpayment or title XVI notice of planned action, we will not find good cause for continuing payments based on mitigating circumstances. Each time a person contacts us within the 1-year timeframe with the intent to show good cause based on mitigating circumstances, the person will have 90 days to supply the necessary proof. If the evidence is not supplied within 90 days, we will determine that good cause has not been shown for that request.

Although Congress explained in SSPA's legislative history (149 Cong. Rec. S16180 (daily ed. Dec. 9, 2003)) that ''the length of time that has passed since the warrant was issued'' may be a mitigating factor for establishing good cause, Congress gave no guidance as to how old the warrant should be in order to be considered a mitigating circumstance. In determining what age of a warrant we would use as a mitigating factor, we reviewed certain statutes of limitations for guidance. For example, there is a 6-year statute of limitations in sections 1128A(c)(1) and 1129(b)(1) of the Act, beyond which we (or the Secretary of Health and Human Services under section 1128A(c)(1)) do not refer cases to the Department of Justice for civil monetary penalty prosecution. Our review gave us a range of years to consider when determining the age of a warrant that would be appropriate to consider as a mitigating factor. Based on our review and our strong commitment to responsible stewardship of the Social Security Trust Fund and the General Fund, we decided to take a careful approach and propose 10 years as the age of a warrant that would constitute a mitigating factor. We may revisit that decision after considering public comments on these proposed rules. We invite you to comment on our proposed use of 10 years for ''the length of time that has passed since the warrant was issued'' and, if you believe a different length of time would be more appropriate, to provide your rationale for the different length of time.

If we find good cause to pay title II and/or title XVI benefits we will do so, and, if appropriate, repay any benefits previously withheld for being a fugitive felon beginning with either the month the arrest warrant was issued, the month of initial title II entitlement or title XVI eligibility, or January 2005, whichever is later.

Currently, §§ 416.202 and 416.1339 specify that a person is ineligible for title XVI payments for any month in which he or she is ''fleeing to avoid'' prosecution, or custody or confinement after conviction for a crime. We propose to clarify how we determine who is a fugitive felon. In order to clarify this point, we propose to remove the references to ''fleeing'' in §§ 416.202 and 416.1339. We interpret the statutory term ''fleeing to avoid'' prosecution, or custody or confinement, to mean that a person has an outstanding warrant for his or her arrest. It is the responsibility of federal, state, local, and foreign courts and law enforcement officials to issue warrants and ensure that they are issued in appropriate circumstances. Therefore, we propose to determine that a person is a fugitive felon when an outstanding felony warrant for the person's arrest exists, even if that person is unaware that an outstanding warrant exists.

Some courts have found that ''fleeing to avoid prosecution'' requires intent on the part of the person to evade the criminal justice system. We believe that the law enforcement agencies and courts that issued the warrant make this intent determination. We rely on the identification of a person as a fugitive felon by federal, state, local, or foreign courts and law enforcement officials in part because we lack the expertise to identify someone as a fugitive within the context of the criminal justice system. Law enforcement officials have identified a person as a fugitive when an outstanding arrest warrant exists. Therefore, we need not make that determination for our program purpose, *i.e.*, for the purpose of determining whether or not to pay benefits.

We believe this position is consistent with one of the intended results of Congress's actions in section 203 of SSPA and section 202 of PRWORA; *i.e.*, to encourage persons to resolve outstanding warrants against them. Further, the legislative history makes clear that a person should be considered ''fleeing'' if it is reasonable to conclude that he or she knew or should have known that criminal charges are pending (148 Cong. Rec. S16181 (daily ed. Dec. 9, 2003). From this, we do not believe that Congress intended that we be the arbiters of these disputes concerning whether or not an individual is actually a fugitive; instead, if a person wishes to challenge a warrant he or she should deal with the appropriate law enforcement authority to resolve the matter. The position we take here will encourage persons to do that.

Furthermore, interpreting the statute to require us to inquire into, and possibly adjudicate, the subjective intent of felons runs counter to one of Congress's, and our, overriding goals: to ensure the efficient administration of the largest benefits programs in the world, involving millions of applications and tens of millions of beneficiaries.

We also propose to remove from the revised §§ 416.202 and 416.1339 the reference to high misdemeanors in New Jersey because the phrase is obsolete, as recognized by Congress in section 203 of the SSPA.

Finally, section 103 of the SSPA disqualifies persons from serving as representative payees if they are avoiding prosecution for a felony or are avoiding confinement for conviction of a felony. We are publishing our proposed rules resulting from section 103 of the SSPA in a separate notice of proposed rulemaking.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table.

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
§ 404.471	12,000	1	30	6,000
§ 416.1339	12,000	1	30	6,000
Total	24,000	—	—	12,000

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be faxed to the Office of Management and Budget at the following number:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: August 25, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart E of part 404 and subparts B and M of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart E—[Amended]

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 423(e), 424a, 425, 902(a)(5) and 1320a–8a) and 48 U.S.C. 1801.

2. Amend § 404.401 by adding paragraph (d)(5) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(d) * * *

(5)(i) The individual has an outstanding arrest warrant for prosecution of a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant; or

(ii) The individual has an outstanding arrest warrant for avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant; or

(iii) The individual has an outstanding arrest warrant for violating a condition of Federal or State probation or parole.

(iv) In jurisdictions in the United States and abroad that do not define crimes as felonies, the provisions of paragraph (d)(5) of this section apply if the crime (or the attempt to commit a crime) is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed.

* * * * *

3. Add § 404.471 to read as follows:

§ 404.471 Nonpayment of benefits to fugitive felons and probation or parole violators.

(a) *Basis for nonpayment.* Beginning with the month of January 2005, we will not pay you a monthly benefit for any month during which you have an outstanding warrant if that warrant has been in effect for more than 30 days and the warrant—

(1) Is for your arrest for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year, regardless of the actual sentence imposed, or

(2) Is for avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year, regardless of the actual sentence imposed, or

(3) Is for violating a condition of probation or parole imposed under Federal or State law.

(b) *Good cause exception to nonpayment.* (1) We will not apply the provisions of paragraph (a) of this section if you contact us at any time and supply proof within 90 days of the date that you contact us that:

(i) A court or equivalent body (such as the United States Parole Commission) of competent jurisdiction:

(A) Found you not guilty of the criminal offense which is the basis for the issuance of the warrant, or

(B) Dismissed the underlying charges relating to the criminal offense which is the basis for the issuance of the warrant, or

(C) Vacated the warrant for your arrest for the criminal offense, or

(D) Issued any similar exonerating order or took a similar exonerating action, or

(ii) You were erroneously implicated in connection with the criminal offense by reason of identity fraud or mistaken identity.

(2) If none of the criteria in paragraph (b)(1) of this section are met, we may pay you benefits if you contact us within 1 year of the date you receive our notice of nonpayment and supply proof within 90 days after the date that you contact us that all of the following apply:

(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related. Violent crimes are those that threaten, attempt to use, or actually use physical force against a person; e.g., assault, homicide, kidnapping/abduction, robbery, and forcible sex offenses. Drug-related crimes are those involving the unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance, and

(ii) You have neither been convicted of nor pled guilty to another felony (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed) since the date of the warrant, and

(iii) The law enforcement agency that issued the warrant reports that it will not extradite you for the charges on the warrant, or that it will not take action on the warrant for your arrest.

(3) If paragraphs (b)(1) and (2) of this section do not apply, we will pay you benefits if you contact us within 1 year of the date you receive our notice of nonpayment and supply proof within 90 days after the date that you contact us that all of the following apply:

(i) The crime, attempt to commit a crime, or violating a condition of probation or parole on which the warrant is based was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related, as defined in paragraph (b)(2)(i), and

(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed) since the date of the warrant, and

(iii) The warrant was issued 10 or more years ago, and

(iv) Your medical condition impairs your mental capability to resolve the warrant; or you are incapable of managing your benefits; or you are legally incompetent; or we have appointed a representative payee to handle your benefits; or you are residing in a long-term care facility, such as a nursing home or mental treatment/care facility.

(c) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the first month throughout which you no longer have an outstanding warrant, or are no longer violating a condition of probation or parole. If we determine that you meet the requirements in paragraph (b) of this section, we will pay you benefits, and repay any benefits previously withheld under paragraph (a) of this section, beginning with either the month the arrest warrant was issued, the month of initial title II entitlement, or January 2005, whichever is later.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[Amended]

4. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

5. Amend § 416.202 by revising paragraph (f) to read as follows:

§ 416.202 Who may get SSI benefits.

* * * * *

(f) You do not have an outstanding warrant for—

(1) Your arrest for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(2) Avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(3) Violating a condition of probation or parole imposed under Federal or State law.

* * * * *

Subpart M—[Amended]

6. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

7. Revise § 416.1339 to read as follows:

§ 416.1339 Suspension of benefits for fugitive felons and probation or parole violators.

(a) *Basis for suspension.* Beginning with the month of August 1996, you will be ineligible for SSI benefits for any month during which you have an outstanding warrant if that warrant—

(1) Is for your arrest for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(2) Is for avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(3) Is for violating a condition of probation or parole imposed under Federal or State law.

(b) *Good cause exception to ineligibility.* Beginning with the month of January 2005:

(1) We will not apply the provisions of paragraph (a) of this section if you contact us at any time and supply proof within 90 days of the date that you contact us that:

(i) A court or equivalent body (such as the United States Parole Commission) of competent jurisdiction:

(A) Found you not guilty of the criminal offense which is the basis for the issuance of the warrant, or

(B) Dismissed the underlying charges relating to the criminal offense which is the basis for the issuance of the warrant, or

(C) Vacated the warrant for your arrest for the criminal offense, or

(D) Issued any similar exonerating order or took a similar exonerating action, or

(ii) You were erroneously implicated in connection with the criminal offense by reason of identity fraud or mistaken identity.

(2) If none of the actions in paragraph (b)(1) of this section are met, we may find you eligible and pay you benefits if you contact us within 1 year of the date you receive our notice of planned action and supply proof within 90 days after the date you contact us that all of the following apply:

(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related. Violent crimes are those that threaten, attempt to use, or actually use physical force against a person; e.g., assault, homicide, kidnapping/abduction, robbery, and forcible sex offenses. Drug-related crimes are those involving the unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance, and

(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year regardless of the actual sentence imposed) since the date of the warrant, and

(iii) The law enforcement agency that issued the warrant reports that it will not extradite you for the charges on the warrant, or that it will not take action on the warrant for your arrest.

(3) If paragraphs (b)(1) and (2) of this section do not apply, we will find you eligible and pay you benefits if you contact us within 1 year of the date you receive our notice of planned action and supply proof within 90 days after the date that you contact us that all of the following apply:

(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related, as defined in paragraph (b)(2)(i) of this section, and

(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed) since the date of the warrant, and

(iii) The warrant was issued 10 or more years ago, and

(iv) Your medical condition impairs your mental capability to resolve the warrant; or you are incapable of managing your benefits; or you are legally incompetent; or we have appointed a representative payee to handle your benefits; or you are residing in a long-term care facility, such as a nursing home or mental treatment/care facility.

(c) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the first month throughout which you no longer have an outstanding warrant, or are no longer violating a condition of probation or parole. If we determine that you meet the requirements in paragraph (b) of this section, we will pay you benefits and repay any benefits previously withheld under paragraph (a) of this section, beginning with either the month the arrest warrant was issued, the month of initial title XVI eligibility, or January 2005, whichever is later.

[FR Doc. 05–23618 Filed 12–2–05; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960–AG19

Continuing Disability Review Failure To Cooperate Process

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our regulations to provide that we will suspend your disability benefits before we make a determination during a continuing disability review (CDR) under title II and title XVI of the Social Security Act (the Act) when you fail to comply with our request for necessary information. Should you remain non-compliant for a period of one year following your suspension, we will then terminate your disability benefits. Although our current title XVI regulations generally provide for the termination of payments after 12 months of suspension, we are proposing to amend our regulations by adding this policy to our title II regulations and by restating it in the title XVI CDR regulatory provisions.

DATES: To be sure that your comments are considered, we must receive them no later than February 3, 2006.

ADDRESSES: You may give us your comments by: using our Internet site facility (i.e., Social Security Online) at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment*, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (i.e., Social Security Online) at *http://www.policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment*.

FOR FURTHER INFORMATION CONTACT: Don Harvey, Social Insurance Specialist, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1026 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Statutory Background

Sections 221(i) and 1614(a)(3)(H)(ii)(I) of the Act and §§ 404.1589, 416.987 and 416.989 of our regulations require that after we find that you are disabled, we evaluate your impairment(s) from time to time to determine if you remain disabled. We call this evaluation a continuing disability review (CDR). If the medical and other evidence shows that you are not disabled under the standards set out in sections 223(f) and 1614(a)(4) of the Act, we will end the

payment of cash benefits and terminate your period of disability.

Section 1614(a)(3)(H)(iii) of the Act and § 416.987 of our regulations require that if you are eligible for payments as a child under title XVI by reason of disability, we redetermine that eligibility during the one-year period beginning on your 18th birthday, or, in lieu of a CDR, whenever we determine that your case is subject to such a review. We call this evaluation an age–18 redetermination. If the medical and other evidence shows that you are not disabled under the standards set out in section 1614(a)(3)(A)–(B) of the Act, we will end the payment of cash payments and terminate your period of disability.

Sections 223(f) and 1614(a)(4) of the Act provide that, in general, if you receive disability benefits under titles II and/or XVI of the Act, we may find that you are no longer disabled if substantial evidence shows that there has been medical improvement in your impairment or combination of impairments, and you are now able to do substantial gainful activity. Under title XVI, if you are a child (an individual under age 18), substantial evidence must show that there has been medical improvement in your impairment or combination of impairments, and the impairment(s) must no longer cause marked and severe functional limitations. We call this the medical improvement review standard (MIRS), and we apply it whenever we do a CDR for an adult or child. The statute also provides, however, for several exceptions to the ''medical improvement'' requirement where we will not apply the MIRS. One of those exceptions to applying the MIRS is the situation where you fail, without good cause, to cooperate with us when we do a CDR.

Continuing Disability Review and Age–18 Redetermination Processes Under Our Current Regulations

When we begin a CDR or an age–18 redetermination, we notify you that we are reviewing your eligibility for disability benefits and explain why we are reviewing your eligibility; what standard will apply, either the MIRS in a CDR or the initial claims criteria in an age–18 redetermination; that our review could result in the termination of your benefits; and that you have the right to submit medical and other evidence for us to consider during the CDR or the age–18 redetermination. Before we determine whether you are still disabled, we develop a complete medical history covering at least the 12 months preceding the date that you complete a report about your continuing disability status. If our review shows that we should stop your benefits, we notify you in writing and give you the opportunity to appeal. (See §§ 404.1589 and 416.989 of our regulations.) We explain when and how often we will do a CDR in §§ 404.1590 and 404.1591 of our title II regulations and in §§ 416.990 and 416.991 of our title XVI regulations. We explain when we will do an age–18 redetermination in § 416.987 of our title XVI regulations.

When we do a CDR, §§ 404.1594(e)(2), 416.987(e)(3), 416.994(b)(4)(ii) and 416.994a(f)(2) of our regulations set out the general principle that is reflected in sections 223(f) and 1614(a)(4) of the Act; i.e., that you have the responsibility to cooperate with us, or take any required action that we decide is necessary to allow us to complete the CDR or age–18 redetermination. If you do not cooperate with us, and you do not have good cause as defined in §§ 404.911 and 416.1411 of our regulations for not cooperating, we will find that your disability has ended.

We currently have no provision in our regulations that allows us to suspend your benefits under title II of the Act if you fail to cooperate with us when we request necessary information during a CDR. However, § 416.1322 of our title XVI regulations provides general authority that allows us to suspend your payments under title XVI of the Act, whenever you fail to cooperate with our requests for information, including during a CDR.

When we suspend your title XVI payments for such failure to cooperate under § 416.1322, we follow § 416.714(b) of our regulations, which gives you thirty days from the date of our written request to comply with the request for information. We also follow § 416.1336 of our regulations, which provides that before we suspend, reduce, or terminate your title XVI payments, we will give you advance notice of our intent and provide you with appeal rights and payment continuation rights pending resolution of the appeal. When we terminate your title XVI payments due to continuous suspension of payments, we follow § 416.1335 of our regulations, which provides that we will terminate your eligibility for payments following 12 consecutive months of payment suspension.

Why Are We Proposing To Revise Our Regulations?

We are continually exploring ways to improve the disability process. These proposed rule changes would allow us to make our rules consistent for all beneficiaries under both titles II and XVI, implement a more efficient CDR process, encourage beneficiaries to cooperate during the CDR process, and make the process less burdensome.

As a result of the proposed revisions, your failure to cooperate in the CDR process would result initially in a suspension rather than a termination of benefits based on a determination that you are no longer entitled to benefits. To have your benefits resumed, you would only have to contact your local Social Security office and provide the requested information and you would have up to 12 months to do so. Accordingly, you would not have to file an appeal in order to have your benefits resumed. In addition, you would not have to request, prepare for, and attend a hearing for your benefits to be resumed.

How Are We Proposing To Change Our Regulations?

We propose to revise §§ 404.1587 and 404.1596 of our title II regulations and to add new § 416.992 to our title XVI regulations. With respect to § 404.1587, we propose to revise the title to reflect that your benefits may be terminated as well as suspended. In addition, we propose to designate the current paragraph as paragraph (a) and add a heading to it. We also propose to add new paragraphs (b) and (c). Under proposed § 404.1587(b), we would suspend your benefits during a CDR when you do not cooperate with us by failing to comply with our written request for any necessary information. If you subsequently give us the information that we requested, we would reinstate your benefits and continue with the CDR process. We would reinstate your benefits for any previous month for which they are otherwise payable. Under proposed § 404.1587(c), we would terminate your benefits following 12 consecutive months of benefit suspension when you fail to comply with our written request for any necessary information made during a CDR. This termination would be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You would have the right to appeal the termination, but you would not have benefit continuation rights.

Under the proposed revisions to § 404.1596, we would revise the title to reflect that your benefits may be terminated as well as suspended. We also would remove current paragraphs (c)(1) and (c)(2) and add new paragraphs (d) and (e) to explain that we would not make a medical determination when you do not cooperate with us by failing to comply with our written request for

any necessary information. We would suspend your benefits only after we give you advance notice. (See § 404.1595.) The advance notice would tell you what you need to do so that your benefits are not suspended as outlined in § 404.1595(b)(3) of our regulations.

Under the proposed revisions to § 404.1596(d), we are adding language to explain that if we suspend your benefits because you fail to cooperate and you subsequently give us the information that we requested, we would reinstate your benefits and continue with the CDR process. We would reinstate your benefits for any previous months for which they are otherwise payable.

With respect to § 404.1596(e), we propose to explain that if we suspend your benefits because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we would terminate your benefits. The termination would be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You would have the right to appeal the termination, but you would not have benefit continuation rights.

We are proposing to add a new § 416.992 to explain what would happen if you fail to comply with our request for information during a CDR or age–18 redetermination. We would suspend your payments before we make a determination regarding your continuing eligibility for disability payments if you fail to comply with our request for information for your CDR or age–18 redetermination. We would suspend your payments only after we give you advance notice as described in § 416.995. The advance notice would tell you what you need to do so that your payments are not suspended as outlined in § 416.1336 of our regulations. If we suspend your payments because you fail to cooperate and you subsequently give us the information that we requested, we would reinstate your payments and continue with the CDR or age–18 redetermination process. We would reinstate your payments for any previous month for which they are otherwise payable. If we suspend your payments because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we would terminate your payments. The termination would be effective with the start of the 13th month after your payments were stopped because you failed to cooperate. You would have the right to appeal the termination, but you would not have payment continuation rights.

Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended by E.O.13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules would meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations impose no reporting requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004; Social Security—Survivors Insurance; 96.006; Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: November 28, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations, as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Sections 202, 205(a), (b), and (d)-(h), 216(i), (221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); section 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1587 is revised to read as follows:

§ 404.1587 Circumstances under which we may suspend and terminate your benefits before we make a determination.

(a) *We will suspend your benefits if you are not disabled.* We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.

(b) *We will suspend your benefits if you fail to comply with our request for necessary information.* We will suspend your benefits effective with the month in which it is determined in accordance with § 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause, to comply with our request for necessary information. When we have received the information, we will continue with the CDR process and reinstate your benefits for any previous month for which they are otherwise payable.

(c) *We will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information

in accordance with § 404.1596(b)(2)(i). We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (b) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

3. Section 404.1596 is amended by revising the section heading, removing paragraphs (c)(1) and (c)(2), redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(1) and (c)(2), and adding new paragraphs (d) and (e) to read as follows:

§ 404.1596 Circumstances under which we may suspend and terminate your benefits before we make a determination.

* * * * *

(d) *When the suspension is effective.* We will suspend your benefits effective with the month in which it is determined in accordance with § 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause, to comply with our request for necessary information for your continuing disability review. This review is to determine whether or not you continue to meet the disability requirements of the law. When we have received the information, we will continue with the CDR process and reinstate your benefits for any previous month for which they are otherwise payable.

(e) *When we will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information in accordance with § 404.1596(b)(2)(i). We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (d) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

4. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Sections 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383(b); secs. 4(c) and (5), 6(c)-(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 1382h note).

5. Section 416.992 is added to read as follows:

§ 416.992 What happens if you fail to comply with our request for information.

We will suspend your payments before we make a determination regarding your continued eligibility for disability payments if you fail to comply with our request for information for your continuing disability review or age-18 redetermination. The suspension is effective with the month in which it is determined in accordance with § 416.1322 that your eligibility for disability payments has ended due to your failure to comply with our request for necessary information. When we have received the information, we will continue with the CDR or age-18 redetermination process, and reinstate your payments for any previous month for which they are otherwise payable. We will terminate your eligibility for payments following 12 consecutive months of payment suspension as discussed in § 416.1335.

[FR Doc. 05–23615 Filed 12–2–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–05–040]

RIN 1625–AA09

Drawbridge Operation Regulations; Wishkah River, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the drawbridge operation regulations for the Heron Street Bridge across the Wishkah River, mile 0.2, at Aberdeen, Washington. The proposed temporary change will enable the bridge owner to delay and plan for openings of the bridge from February 2006 through March 2007. This will facilitate major structural and mechanical rehabilitation of the bridge.

DATES: Comments and related material must reach the Coast Guard on or before February 3, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpw), 13th Coast Guard District, 915 Second Avenue, Seattle, WA 98174–1067 where the public docket for this rulemaking is maintained. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD13–05–040], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Aids to Navigation and Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary rule would enable the Washington State Department of Transportation (WSDOT), the owner of the bridge, to rehabilitate the structure and manage interruptions to this refurbishment caused by draw openings. The 48-hour notice requirement proposed as a temporary requirement would enable the work to proceed while still providing operational capability. The work includes mechanical and electrical improvements, seismic retrofit, debris containment, replacement of all navigation lights and hydraulic locks for the swing span. This work will be done between February, 2006 and April, 2007. The replacement of the center bearing will require the bridge to be closed for 14 calendar days and will be authorized via a separate rulemaking. This portion of the project will require jacking the span in place to replace the pivot bearing, thereby immobilizing the draw.

The Heron Street Bridge in the closed position provides 13 feet of vertical clearance above high water and 23 feet above the lowest tide level. Drawbridge openings are not frequent at this location, mostly for recreational and commercial fishing vessels, rarely for sailboats.

From March 7, 2004, to August 10, 2005, the draw opened for vessels 41 times with most of these openings for single vessels. For the 12 months from March 2004 to March 2005 the draw opened 28 times for an average of little better than twice a month.

Discussion of Proposed Rule

The operating regulations currently in effect for the Heron Street Drawbridge are found at 33 CFR 117.1065. The regulations require at least one hour notice at all times for draw openings.

One-hour notice is insufficient time for WSDOT and its contractors to restore the bridge to operational condition and to clear equipment from moving parts as needed to swing the span open. WSDOT would be able to restore the bridge to fully operational status within 48 hours. As most of the few vessels requiring openings appear to be commercial fishing boats that operate seasonally, the increased notice proposed would not seem an unreasonable burden to vessel operators.

Regulatory Evaluation

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

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

With regards to the proposed temporary changes, we reached this conclusion based on the fact that most vessels will be able to plan transits at least 48 hours in advance.

Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section, at (206) 220–7282. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the proposed action that would require further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to temporarily amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From February 1, 2006 to April 1, 2007, amend § 117.1065 by revising paragraph (c) to read as follows:

§ 117.1065 Wishkah River.

* * * * *

(c) The draws of the Heron Street Bridge, mile 0.2, shall open on signal if at least 48 hours notice is provided. The draw of the Wishkah Street Bridge, mile 0.4, shall open on signal if at least one hour notice is provided. The opening signal for both bridges is one prolonged blast followed by two short blasts.

Dated: November 23, 2005.

R.R. Houck,

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

[FR Doc. 05–23637 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 70, No. 232
Monday, December 5, 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

Lower Trinity Ranger District, Six Rivers National Forest, California, SPI Road Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement to disclose the environmental effects from construction of an access road approximately 4,800 feet long to Sierra Pacific industrial private lands surrounded by Forest Service Lands.

DATES: Comments concerning the scope of the analysis must be received by thirty days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by February 2006 and the final environmental impact statement is expected by May 2006.

ADDRESSES: Send written comments concerning this notice to Jeff Walter, Forest Supervisor, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501–3834. Comments may be (1) mailed to the Responsible Official; (2) hand delivered between the hours of 8 a.m.–4:30 p.m. Monday through Friday excluding holidays; (3) faxed to (707) 442–9242; or (4) electronically mailed to: *comments-pacificsouthwest-six-rivers@fs.fed.us.* Comments submitted electronically must be in Rich Text Format (.rtf).

FOR FURTHER INFORMATION CONTACT: Katherine Worn, Project Leader, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, CA 95573 or call (530) 629–2118.

SUPPLEMENTARY INFORMATION: The project area is located in the South Fork Watershed entirely within Trinity County, within the General Forest Management Area and Riparian Reserves, in T4N, R6E, section 10, HM.

Purpose and Need for Action

There is a need for action on a special use permit application submitted by Sierra Pacific Industries property to allow construction of a road across national forest lands to provide access to their property. The purpose to provide access to Sierra Pacific Industries is to comply with the provisions of the 1989 Alaskan National Interest Lands Conservation Act, section 1323, and the Forest Service regulation for evaluating and granting access to private lands within the national forest system at 36 CFR 251.110 to 251.114.

The 1989 Alaskan National Interest Lands Conservation Act, section 1323, states:

''(a) Notwithstanding any other provision of law, and subject to such terms and provisions of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof; Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.''

In 36 CFR 251.111 it defines adequate access, and in 36 CFR 251.114 it describes the criteria, terms, and conditions of its granting: ''* * * (2) *the route is so located and constructed as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal Lands;* * * *''

There is also a purpose and need to comply with Six Rivers Land and Resource Management Plan standards and guidelines with respect to riparian reserves, late successional reserves, and heritage and cultural resources.

Proposed Action

The Six Rivers National Forest is proposing to authorize a special use permit to Sierra Pacific Industries (SPI) to construct, use and maintain 4,811 feet of access road, during the dry season, across National Forest System lands in the W½ Section 10, T4N, R6E, HM. The road is needed for SPI to access their property located in the SW¼ of Section 9, T4N, R6E, HM, in the upper Underwood Creek drainage, since it is surrounded by Forest Service lands.

Amend the Land and Resource Management Plan (LRMP)

This proposal includes a site-specific forest plan amendment. It amends the LRMP standard and guide 9–8 in Chapter IV on page 111, which states: ''Inside roadless areas—No new roads will be built in remaining unroaded portions of inventoried (RARE II) roadless areas that still qualify as 'roadless.' '' Therefore this standard and guide would not apply to this project.

Possible Alternatives

Currently the Six Rivers is anticipating analyzing in detail four alternatives, the no action, proposed action, a helicopter only alternative, and a temporary road alternative.

Responsible Official

Jeff Walter, Forest Supervisor, 1330 Bayshore Way, Eureka, CA 95501–3834, is the Responsible Official.

Nature of Decision To Be Made

The Forest Service must decide whether it will implement this proposal, an alternative design that moves the area towards the desired condition, or not to implement any project at this time.

Scoping Process

In the 2nd and 3rd Quarters of 2003, the 3rd Quarter of 2005, and the 1st quarter of 2006, the Sierra Pacific Industries (SPI) Road Project was included in the Six Rivers National Forest Schedule of Proposed Action, which was posted on the Six Rivers National Forest's internet Web site and mailed to interested parties. The proposal was to build 4,811 feet of road. On October 18, 2004 a scoping letter was mailed to interested and affected tribes, individuals, organizations, and Federal, State and local agencies with responsibilities for local resource management. After evaluating responses to the November 2004 scoping period, the Forest Service has decided to prepare an environmental impact statement (EIS) for this project. This notice of intent invites additional public comment on this proposal and initiates the preparation of the environmental impact statement. The proposal has not been changed, except for the amendment to the LRMP, since scoping in November of 2004. Comments submitted at that time will be used in

the environmental analysis process. Due to the extensive scoping efforts already conducted, no scoping meeting is planned.

The scoping process will include identification of potential issues, in depth analysis of significant issues, development of alternatives to the proposed action, and determination of potential environmental effects of the proposal and alternatives. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. The public is encouraged to take part in the planning process and to visit with Forest Service officials at any time during the analysis and prior to the decision.

Preliminary Issues

The following preliminary issues have been identified for this proposal: Construction of roads in the Underwood Inventoried Roadless Area, impacts to water quality from construction activities associated with the project, potential spreading of noxious weed species known to occur in the area because of the projects ground disturbing activities, and use of alternatives to ground based systems.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments submitted during the November 2004 scoping period will be used in the environmental analysis process. Those who submitted comments at that time do not need to comment again, unless they have new comments they would like to provide. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed vegetation management activities.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be forty-five days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the forty-five day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 29, 2005.

Jeff Walter,

Forest Supervisor.

[FR Doc. 05–23603 Filed 12–2–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, December 19, 2005. The meeting will include routine business, a discussion of larger scale projects, and the recommendation for implementation of submitted project proposals.

DATES: The meeting will be held December 19, 2005, from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, RAC Coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 29, 2005.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 05–23604 Filed 12–2–05; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act; Notice of Meeting

DATE AND TIME: Wednesday, November 30, 2005, 2 p.m.–3 p.m.

PLACE: Cohen Building, Room 3360, 330 Independence Avenue, SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in a special session to review and discuss budgetary issues relating to U.S. Government-funded non-military international broadcasting. 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)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: November 30, 2005.

Carol Booker,

Legal Counsel.

[FR Doc. 05–23685 Filed 12–1–05; 3:26 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Corrosion-Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Victoria Cho at (202) 482–5075, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2004, the Department published a notice of initiation of the administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Korea, covering the period August 1, 2003, to July 31, 2004, (the ''eleventh review'') (69 FR 56745). On April 7, 2005, the Department fully extended the preliminary results of the eleventh administrative review by 120 days (70 FR 17648). On September 7, 2005, the Department published the preliminary results of the eleventh administrative review (70 FR 53153). The final results of this review are currently due no later than January 5, 2006.

Extension of Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and to extend the time limit for the final result to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit of complex model-match issues that cuts across all of the antidumping duty orders on the subject merchandise. Therefore, the Department is extending the deadline for the final results of the above referenced review by 32 days until February 6, 2006.This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: November 28, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–23625 Filed 12–2–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–847)

Notice of Extension of Time Limit for the Final Results of the Administrative Review of the Antidumping Duty Order on Persulfates From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or Frances Veith at (202) 482–4295, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on persulfates from the People's Republic of China (''PRC'') covering the period July 1, 2003, through June 30, 2004. *See Persulfates from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 46476 (August 10, 2005). The Department is extending the time limit for the final results of the administrative review of the antidumping duty order on persulfates from the PRC. The final results of this review are currently due no later than December 8, 2005.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended, (''the Act''), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results. Completion of the final results within the 120-day period is not practicable due to several complex issues regarding the selection of the appropriate surrogate financial statements to use in the calculation of normal value for the final results. The parties have submitted extensive arguments regarding the use of financial data from producers of comparable products to derive surrogate financial ratios.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of this review by 60 days until February 6, 2006.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 29, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6844 Filed 12–2–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Notice of Extension of Time Limit for Final Results of Administrative Review: Saccharin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4207.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on saccharin from the People's Republic of China (''PRC'') covering the period December 27, 2002, through June 30, 2004. *See Saccharin from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 45657 (August 8, 2005). The final results of the antidumping duty administrative review of saccharin from the PRC are currently due no later than December 6, 2005.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'') requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period to 180 days. Completion of the final results within the 120-day period is not practicable due to a potential issue arising in a concurrent scope proceeding of the antidumping duty order on saccharin from the PRC regarding acid saccharin being shipped from the PRC to a third country where it is processed into sodium saccharin and then shipped to the United States.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for issuing the final results. Because the extended date, February 4, 2006, falls on a Saturday, we will issue the final results no later than February 6, 2006.

On September 2, 2005, the Department extended the deadline of September 7, 2005, until further notice for interested parties to submit case briefs and/or written comments on the preliminary results of review. Interested parties may submit case briefs and/or written comments no later than December 13, 2005. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than December 20, 2005. The Department will also notify parties regarding the schedule for a public hearing to be held at a future date pursuant to a request submitted by Shanghai Fortune Chemical Co., Ltd. The public hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 29, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6845 Filed 12–2–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–804]

Continuation of Antidumping Duty Order: Sparklers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''Commission'') that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department hereby orders the continuation of the antidumping duty order on sparklers from the People's Republic of China (''China''). The Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq. or Maureen Flannery, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–4340 or 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department initiated and the Commission instituted a sunset review of the antidumping duty order on sparklers from China pursuant to section 751(c) of the Act. *See Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 31537 (June 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked. *See Sparklers from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 70 FR 58382 (October 6, 2005).

On November 15, 2005, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Sparklers from China*, 70 FR 70636 (November 22, 2005), USITC Publication 3814 (November 2005) (Investigation No. 731–TA–464 (Second Review)).

Scope of the Order

The products subject to this order are fireworks each comprising a cut–to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classified under subheadings 3604.10.10.00, 3604.10.90.10, and 3604.10.90.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Sparklers were formerly classified under HTSUS subcategory 3604.10.00. The Department has reviewed the current categories and has determined that sparklers are currently classified in the above subcategories. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to sections 751(d)(2)(A) and (B) of the Act, the Department hereby orders the continuation of the antidumping duty order on sparklers from China.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation for this order is the date of publication in the **Federal Register** of

this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five–year review of this antidumping order not later than November 2010.

This sunset review and this continuation notice are in accordance with section 751(c) of the Act and published pursuant to 777(i) of the Act.

Dated: November 29, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–6846 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Extension of the Time Limit for the Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Victoria Cho at (202) 482–5075 or George McMahon at (202) 482–1167, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2005, the Department of Commerce (the Department) published a notice of initiation of antidumping duty new shipper review on certain carbon steel welded pipe and tube from Turkey covering the period of review (POR) from May 1, 2004, through, April 30, 2005. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 1, 2004, through April 30, 2005*, 70 FR 39487 (June 30, 2005). The preliminary results are currently due no later than December 27, 2005.

Extension of Time Limit of Preliminary Results

Section 751(a)(2)(B)(iv) of the Act, requires the Department to issue the preliminary results of a new shipper review within 180 days of the date it was initiated. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 180–day period to 300 days. Based on an allegation filed by the petitioner, we initiated a sales–below-cost investigation on September 28, 2005, and received the response to section D of the questionnaire on November 9, 2005. In order to allow sufficient time to analyze the sales and cost data and to issue supplemental questionnaires, we must extend the time limit to complete the preliminary results of this review. Given the complexity of this case, and in accordance with section 751(a)(2)(B)(iv) of the Act, we are extending the time limit for issuing the preliminary results of review until April 26, 2006, which is 300 days after the date of initiation. The deadline for the final results of this review will continue to be 90 days after publication of the preliminary results.

This extension is issued and published in accordance with section 751(a)(2)(B)(iv) and 777 (i)(1) of the Act and 19 CFR 351.214(I)(2).

Dated: November 28, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–23626 Filed 12–2–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501]

Certain In-shell (Raw) Pistachios From the Islamic Republic of Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department of Commerce (the Department) published in the **Federal Register** the countervailing duty order on certain in–shell pistachios from Iran. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In–shell Pistachios from Iran*, 51 FR 8344 (March 11, 1986) (*In–shell Pistachios*). On March 1, 2005, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the countervailing duty order on in–shell pistachios from Iran (70 FR 9918). As a result of requests properly filed by the California Pistachio Commission (CPC) and Cal Pure Pistachios, Inc. (Cal Pure) on March 31, 2005, we are conducting an administrative review of the countervailing duty order on in–shell pistachios from Iran with respect to Tehran Negah Nima Trading Company, Inc. (Nima). On April 22, 2005, we published in the **Federal Register** the initiation of this countervailing duty administrative review (70 FR 20862). The preliminary results are currently due no later than December 1, 2005.

Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days.

We determine that it would not be practicable to complete this review by December 1, 2005. There are a large number of programs, including new subsidy programs, to be considered and analyzed by the Department by that deadline. As a result, the Department is extending the time limits for completion of the preliminary results until no later than February 14, 2006, which is 320 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 28, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6847 Filed 12–2–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Entry of Shipments of Cotton, Wool and Man-Made Fiber Textiles and Apparel in Excess of China Textile Safeguard Limits

November 29, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a Directive to Commissioner, U.S. Customs and Border Protection.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice and letter to the Commissioner, U.S. Customs and Border Protection, published in the **Federal Register** on April 26, 2005 (70 FR 21399), CITA announced that shipments in excess of China safeguard limits will be subject to delayed staged entry in a manner similar to the procedure explained in a notice and letter to the Commissioner, U.S. Customs and Border Protection, published in the **Federal Register** on December 13, 2004 (69 FR 72181). Any overshipments of China safeguard quotas will be subject to the following procedures:

(1) Entry will not be allowed until one month after the expiration date of the safeguard quota.

(2) At that time, only 5 percent of the base limit will be allowed entry for a one month period beginning on that date.

(3) An additional 5 percent will be allowed entry monthly until all overshipments are allowed entry.

Safeguard limits on textile and apparel goods from China have been in place as follows:

Limits for Categories 338/339, cotton knit shirts and blouses; 347/348, cotton trousers; 352/652, cotton and man-made fiber underwear have been in place since May 23, 2005;

Limits for Categories 638/639, man-made fiber knit shirts and blouses; 647/648, man-made fiber trousers; 301, combed cotton yarn; 340/640, men's and boys' cotton and man-made fiber shirts, not knit have been in place since May 27, 2005;

and limits for Categories 349/649, cotton and man-made fiber brassieres and other body supporting garments; 620, other synthetic filament fabric; have been in place since August 31, 2005

The limits for all these categories extend through December 31, 2005. (See 70 FR 29722, 70 FR 30930, 70 FR 52994, respectively). Any overshipments of these limits shall be subject to delayed and staged entry as described above, and as provided specifically in the accompanying directive to the Commissioner, U.S. Customs and Border Protection.

Shipments allowed entry pursuant to paragraph 8 of the Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China concerning Trade in Textile and Apparel Products, signed and dated November 8, 2005 (''Memorandum of Understanding''), will not be subject to staged entry.

Staged entry requirements for overshipments of the October 29, 2004–October 28, 2005 safeguard limits for socks (in Categories 332/432/632part) for the November 1–December 31, 2005 period, and of the agreed level of restraint for socks (in Categories 332/432/632part) have been announced separately, in notices and letters to the Commissioner, U.S. Customs and Border Protection, published in the **Federal Register** on April 26, 2005 (70 FR 21399); and November 9, 2005 (70 FR 67992).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 2005.

Commissioner,
U.S. Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive provides instructions on permitting entry to goods shipped in excess of the China textile safeguard limits on cotton, wool and man-made fiber textiles and apparel products exported from China during the May 23, 2005–December 31, 2005 period (Categories 338/339, 347/348, and 352/652); the May 27, 2005–December 31, 2005 period (Categories 638/639, 647/648, 301, and 40/640); and the August 31, 2005–December 31, 2005 period (Categories 349/649, and 620).

From February 1 through February 28, 2006, you are directed to permit entry of goods in an amount equal to 5 percent of the base limits for the safeguards for 2005. These numbers have been calculated and are shown in the table below. For each succeeding period, beginning on the first of the month, and extending through the last day of the month, you are to permit entry of goods in an amount equal to the amounts in the table below until all shipments in excess of the safeguard limits have been entered.

Category	5 percent of base limit
301	72,539 kilograms.
338/339	235,206 dozen.
340/640	110,656 dozen.
347/348	217,032 dozen.
349/649	363,761 dozen.
352/652	253,145 dozen.
620	616,415 square meters.
638/639	142,219 dozen.
647/648	133,034 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–6842 Filed 12–2–05; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Testing and Recordkeeping Requirements for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of carpets and rugs. The collection of information is in regulations implementing the Standard for the Surface Flammability of Carpets and Rugs (16 CFR part 1630) and the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR part 1631). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for products subject to the carpet flammability standards. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the OMB.

DATES: The Office of the Secretary must receive comments not later than February 3, 2006.

ADDRESSES: Written comments should be captioned ''Carpets and Rugs; Paperwork Reduction Act,'' and sent by e-mail to *cpsc-os@cpsc.gov*. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–7671.

SUPPLEMENTARY INFORMATION:

A. The Standards

Carpets and rugs that have one dimension greater than six feet, a surface area greater than 24 square feet, and are manufactured for sale in or imported into the United States are subject to the Standard for the Surface Flammability of Carpets and Rugs (16 CFR part 1630). Carpets and rugs that have no dimension greater than six feet and a surface area not greater than 24 square feet are subject to the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR part 1631).

Both of these standards were issued under the Flammable Fabrics Act (FFA) (15 U.S.C. 1191 *et seq.*). Both standards require that products subject to their provisions must pass a flammability test that measures resistance to a small, timed ignition source. Small carpets and rugs that do not pass the flammability test comply with the standard for small carpets and rugs if they are permanently labeled with the statement that they fail the standard and should not be used near sources of ignition.

Section 8 of the FFA (15 U.S.C 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on ''reasonable and representative'' tests. Many manufacturers and importers of carpets and rugs issue guaranties that the products they produce or import comply with the applicable standard. Regulations implementing the carpet flammability standards prescribe requirements for testing and recordkeeping by firms that issue guaranties. See 16 CFR part 1630, subpart B, and 16 CFR part 1631, subpart B. The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with carpet fires. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

The OMB approved the collection of information in the regulations under control number 3041–0017. OMB's most recent extension of approval expires on February 28, 2006. The Commission now proposes to request an extension of approval without change for the collection of information in the regulations.

B. Estimated Burden

The Commission staff estimates that the enforcement rules result in an industry expenditure of a total of 30,000 hours for testing and recordkeeping. The Commission staff estimates that 120 firms are subject to the information collection requirements because the firms have elected to issue a guaranty of compliance with the FFA. The number of tests that a firm issuing a guaranty of compliance would be required to perform each year varies, depending upon the number of carpet styles and the annual volume of production. The staff estimates that the average firm issuing a continuing guaranty under the FFA is required to conduct a maximum of 200 tests per year. The actual number of tests required by a given firm may vary from 1 to 200, depending upon the number of carpet styles and the annual production volume. For purposes of estimating the burden, the staff used the midpoint, 100 tests per year. The time required to conduct each test is estimated by the staff to be 2½ hours plus the time required to establish and maintain the test record. The total annualized burden to respondents may be up to 12,000 tests per year at 2.5 hours per test or 30,000 hours. The estimated annualized cost to respondents may be up to $862,500, based on an hourly wage of $28.75 (Bureau of Labor Statistics, June 2005) × 30,000 hours. The estimated annual cost of the information and collection requirements to the Federal government is approximately $28,000. This sum includes three staff months expended for examination of the records required to be maintained.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: November 29, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E5–6799 Filed 12–2–05; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of children's articles known as baby-bouncers, walker-jumpers, or baby-walkers. The collection of information consists of requirements that manufacturers and importers of these products must make, keep and maintain records of inspections, testing, sales, and distributions consistent with the provisions of the Federal Hazardous Substances Act, 15 U.S.C. 1261, 1262, and 16 CFR part 1500.

The CPSC will consider all comments received in response to this notice before requesting approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive written comments not later than February 3, 2006.

ADDRESSES: Written comments should be captioned ''Baby-Bouncers'' and sent by e-mail to *cpsc-os@cpsc.gov*. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1500, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: Products called ''baby-bouncers,'' ''walker-jumpers,'' or ''baby-walkers'' are intended to support very young children while they sit, bounce, jump, walk, or recline. Regulations issued under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262), codified at 16 CFR part 1500, establish safety requirements for these products.

A. Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

One CPSC regulation bans any product known as a baby-bouncer, walker-jumper, baby-walker or similar article if it is designed in such a way that exposed parts present hazards of amputations, crushing, lacerations, fractures, hematomas, bruises or other injuries to children's fingers, toes, or other parts of the body. 16 CFR 1500.18(a)(6).

A second CPSC regulation establishes criteria for exempting baby-bouncers, walker-jumpers, and baby-walkers from the banning rule under specified conditions. 16 CFR 1500.86(a)(4). The exemption regulation requires certain labeling on these products and their packaging to identify the name and address of the manufacturer or distributor and the model number of the product. Additionally, the exemption regulation requires that records must be established and maintained for three years relating to testing, inspection, sales, and distributions of these products. The regulation does not specify a particular form or format for the records. Manufacturers and importers may rely on records kept in the ordinary course of business to satisfy the recordkeeping requirements if those records contain the required information.

If a manufacturer or importer distributes products that violate the banning rule, the records required by § 1500.86(a)(4) can be used by the manufacturer or importer and the CPSC (i) to identify specific models of products that fail to comply with applicable requirements, and (ii) to notify distributors and retailers if the products are subject to recall.

The OMB approved the collection of information requirements in the regulations under control number 3041–0019. OMB's most recent extension of approval expires on January 31, 2006. The CPSC now proposes to request an extension of approval without change for the collection of information requirements.

B. Estimated Burden

The CPSC staff estimates that about 28 firms are subject to the testing and recordkeeping requirements of the regulations. The CPSC staff estimates further that the burden imposed by the regulations on each of these firms is approximately 2 hours per year. Thus, the total annual burden imposed by the regulations on all manufacturers and importers is about 56 hours.

The CPSC staff estimates that the hourly wage for the time required to perform the required testing and to maintain the required records is about $28.75 (Bureau of Labor Statistics, June 2005), and that the annual total cost to the industry is approximately $1,600.

During a typical year, the CPSC will expend approximately two days of professional staff time reviewing records required to be maintained by the regulations for baby-bouncers, walker-jumpers, and baby-walkers. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $853 (based on $53.29/hour staff time).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: November 29, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E5–6800 Filed 12–2–05; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval for a period of three years from the date of approval of a collection of information associated with the procurement of goods and services. Forms used by the

Commission for procurement of goods and services request persons who quote, propose, or bid on contracts to provide information needed to evaluate quotes, proposals, and bids in accordance with applicable laws and regulations.

The Commission will consider all comments received in response to this notice before requesting extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than February 3, 2006.

ADDRESSES: Written comments should be captioned ''Procurement of Goods and Services; Paperwork Reduction Act,'' and sent by e-mail to *cpsc-os@cpsc.gov*. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–7671.

SUPPLEMENTARY INFORMATION: The Commission's procurement of goods and services is governed by the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 253 *et seq.*). That law requires the Commission to procure goods and services under conditions most advantageous to the government, considering cost and other factors.

A. Information Required by Procurement Forms

The Commission requires persons and firms to submit quotations, proposals, and bids for contracts to provide goods and services on standardized forms. These forms request information from offerors about costs or prices of goods and services to be supplied; specifications of goods and descriptions of services to be delivered; competence of the offeror to provide the goods or services; and other information about the offeror such as the size of the firm and whether it is minority owned. The Commission uses the information provided by offerors to determine the reasonableness of prices and costs and the responsiveness of potential contractors to undertake the work involved so that all bids may be awarded in accordance with Federal procurement laws.

OMB approved the collection of information requirements in the procurement forms used by the Commission under control number 3041–0059. OMB's most recent extension of approval will expire on January 31, 2006. The CPSC now proposes to request extension of approval for the information collection requirements in the forms used for procurement of goods and services. The Commission plans to use the Internet and the General Services Administration's (GSA) GSA Advantage System for delivery order purchasing. The Internet provides small businesses access to information about the Commission's current needs for goods and services.

B. Information Collection Burden

During fiscal year 2004, approximately 870 firms spent about 17,658 hours responding to all Requests for Quotations (RFQs), and Requests for Proposals (RFPs) issued by the Commission. The time required by vendors to respond ranged from as little as 15 minutes per firm for a simple telephone, e-mail, fax, or Internet response concerning the purchase of a standard item or service, to as much as 120 hours per firm for a complex written offer prepared in response to technically complex RFQs and RFPs. Based on the number of procurements, details of actions reported by the Federal Procurement Data System, and the procurement staff's experience with the sales and technical functions of various vendors, we believe firms spent an estimated 368 hours responding to oral, electronic, and written RFQs and RFPs and approximately 17,290 hours preparing quotes and proposals in response to more complex RFQs and RFPs.

The cost of preparing a response to an oral, electronic, or written RFQ or RFP for regular sales staff and high level sales staff with advanced technical expertise for more complex procurements averaged $41.03 per hour. The cost of preparing a response to more complicated and highly complex FRQs or RFPs for high level sales and proposal response staff with advanced technical expertise and experience averaged $52.70 per hour. The salary estimates are based on web research from careerjournal.com, salary.com and monster.com. The annualized cost to all firms for responding to all RFQs and RFPs issued by the Commission is estimated to be $926,282.04 (368 hours × $41.03/hr + 17,290 hours × $52.70/hr = $926,282.04).

The total cost to the government for all collections of information by the Commission related to procurement of goods and services is estimated to be about $830,447 a year. This estimate was made by reviewing the Commission's procurement activities in fiscal year 2004.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: November 29, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E5–6801 Filed 12–2–05; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 4, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 28, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Final Reporting Forms—FIPSE International Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 35.

Burden Hours: 700.

Abstract: Protocols for final performance for FIPSE's three international programs are necessary to assure the quality of program management and progress toward meeting performance objectives which include student learning, encouraging international cooperation, and partnerships among higher education institutions in the U.S. and abroad. These are final reporting forms for FIPSE's three international competitions. These forms are used at the conclusion of the performance and budget periods for these three competitions: P116J, P116M and P116N.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2885. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–6805 Filed 12–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 29, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System.

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 44,340; Burden Hours: 147,867.

Abstract: IPEDS is a system of surveys designed to collect basic data from approximately 6,600 Title IV postsecondary institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Section 131, specify the need for the ''redesign of relevant data systems to improve the usefulness and timeliness of the data collected by such systems.'' As a consequence, in 2000 IPEDS began to collect data through a web-based data collection system and to concentrate on those

institutions that participate in Title IV federal student aid programs; other institutions may participate on a voluntary basis.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2940. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–6806 Filed 12–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 29, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: An Impact Evaluation of a School-Based Violence Prevention Program.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 24,950.

Burden Hours: 23,911.

Abstract: The purpose of the study is to implement and test an intervention that combines a classroom-based curriculum with a whole-school approach. The evaluation will provide important and useful information by helping to determine if the intervention decreases problem behaviors and improves school climate and safety.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2945. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–6807 Filed 12–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a continuation of a collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The package requests a three-year extension of its Financial Assistance Information Collection, OMB Control Number 1910–0400. This information collection package covers collections of information necessary to plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste and abuse are immediately detected and eliminated. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before February 3, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Richard Langston, Office of Procurement and Assistance, MA–61, 1000 Independence Avenue, SW., Washington, DC, 20585, or by fax at 202–287–1345, or by e-mail at *Richard.Langston@hq.doe.gov* and to Sharon Evelin, Director, Records Management Division IM–11/ Germantown Bldg., Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290 or by fax, 301–903–3455 or by e-mail to *Sharon.Evelin@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Langston at the address above.

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.:* 1910–0400; (2) *Package Title:* DOE Financial Assistance Information Clearance; (3) *Type of Review:* Continuation of Information Collection under Paperwork Reduction Act; (4) *Purpose:* This information collection package covers collections of information necessary to plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste and abuse are immediately detected and eliminated; (5) *Privacy Impact Assessment:* This is not applicable as none of the collections requests personal or private information; (6) *Number of Collections:* 36; (7) *Respondents:* 44,457; and, (8) *Estimated Number of Burden Hours:* 415,544.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Dated: Issued in Washington, DC, on November 18, 2005.

Michael P. Fischetti,

Director, Office of Procurement and Assistance Policy, Office of Procurement and Assistance Management.

[FR Doc. E5–6843 Filed 12–2–05; 8:45 am]

BILLING CODE 6450–01–P

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 29, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. CheckSpring Community Corporation, Bronx, New York; to become a bank holding company by acquiring 100 percent of the voting shares of CheckSpring Bank, New York, New York, a *de novo* bank.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to merge with Gold Banc Corporation, Inc., Leawood, Kansas, and thereby indirectly acquire voting shares of Gold Bank, Leawood, Kansas.

In connection with this application, Applicant also has applied to acquire Gold Trust Company, Saint Joseph, Missouri, and indirectly Gold Capital Management, Inc., Overland Park, Kansas, and thereby engage in trust company functions; financial and investment advisory activities; agency transactional services for customer investments, and investment transactions as principal, pursuant to sections 225.28(b)(5), (b)(6)(i); (b)(7)(i); and (b)(8)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–6789 Filed 12–2–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of

a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. BV Bancshares, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Stonebridge Bank, Minneapolis, Minnesota, a *de novo* bank.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. United Bancorporation of Wyoming, Inc., Jackson, Wyoming; to acquire 100 percent of the voting shares of First National Bank Holding Company, Inc., and thereby indirectly acquire voting shares of First National Bank of Pinedale, both in Pinedale, Wyoming.

Board of Governors of the Federal Reserve System, November 30, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6841 Filed 12–2–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 1, 2005

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 20, 2005.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. to further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 4 percent.

The vote encompassed approval of the paragraph below for inclusion in the statement to be released shortly after the meeting:

The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

By order of the Federal Open Market Committee, November 28, 2005.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 05–23622 Filed 12–2–05; 8:45am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0169; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: Uniform Administrative Requirements for Grantors and Cooperative Agreements to State and Local Governments.

Form/OMB No.: OS–0990–0169.

Use: Pre-Award, Post-Award, and subsequent reporting and record keeping requirements are necessary to award, monitor, close out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste and abuse.

Frequency: Reporting, on occasion.

Affected Public: State, local or tribal government.

Annual Number of Respondents: 4,000.

Total Annual Responses: 4,000.

Average Burden Per Response: 1 hour.

Total Annual Hours: 280,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0169), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: November 23, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6809 Filed 12–2–05; 8:45 am]

BILLING CODE 4150–24–P

[1] Copies of the Minutes of the Federal Open Market Committee Meeting on November 1, 2005, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–06–0004]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Disease Surveillance Program—II. Disease Summaries (0920–0004)—Reinstatement—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service (PHS) since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC National Disease Surveillance Program is based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years, the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded.

CDC and the Council of State and Territorial Epidemiologists (CSTE) collect data on disease and preventable conditions in accordance with jointly approved plans. Changes in the surveillance program and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are reviewed and revised based on variations in the public's health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC at variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the Morbidity and Mortality Weekly Report (MMWR), providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: Diarrheal disease surveillance (includes campylobacter, salmonella, and shigella), foodborne outbreaks, arboviral surveillance (ArboNet), Influenza virus, including the annual survey and influenza-like illness, Respiratory and Enterovirus surveillance, rabies, waterborne diseases, cholera and other vibrio illnesses, and calicinet. These data are essential on the local, state, and Federal levels for measuring trends in diseases, evaluating the effectiveness of current prevention strategies, and determining the need for modifying current prevention measures.

This request is for reinstatement of the data collection for three years. Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses	Hours/ response	Response burden
Diarrheal Disease Surveillance:				
—Campylobacter (electronic)	53	52	3/60	138
—Salmonella (electronic)	53	52	3/60	138
—Shigella (electronic)	53	52	3/60	138
Foodborne Outbreak Form	52	25	15/60	325
Arboviral Surveillance (ArboNet)	54	717	5/60	3,227
Influenza:				
—Influenza virus (fax, Oct–May)	44	33	10/60	242
—Influenza virus (fax, year round)	12	52	10/60	104
—Influenza virus (electronic, Oct–May)	14	33	5/60	39
—Influenza virus (electronic, year round)	10	52	5/60	43
Influenza Annual Survey	80	1	15/60	20
Influenza-like Illness (Oct–May)	620	33	15/60	5115
Influenza-like Illness (year round)	130	52	15/60	1690
Monthly Respiratory & Enterovirus Surveillance Report:				
—Excel format (electronic)	25	12	15/60	75
—Access format (electronic)	2	12	15/60	6
National Respiratory & Enteric Virus Surveillance System (NREVSS)	89	52	10/60	771
Rabies (electronic)	40	12	8/60	64
Rabies (paper)	15	12	20/60	60
Waterborne Diseases Outbreak Form	60	2	20/60	40
Cholera and other Vibrio illnesses	300	1	20/60	100
CaliciNet	30	10	10/60	50
Total				12,257

Dated: November 29, 2005.

Joan Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–6811 Filed 12–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 1 p.m.–5:30 p.m., November 29, 2005. 8:30 a.m.–5 p.m., November 30, 2005.

Place: CDC, Building 19, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: Program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to Be Discussed: Agenda items will include:

1. Opening Session: NCID Update.
2. CCID Update.
3. Environmental Microbiology.
4. Development of CDC Research Agenda.
5. Veterinary-Human Public Health Interface.
6. Global Disease Detection Initiative.
7. Topic Updates.
   a. Chronic Wasting Disease.
   b. Quarantine Update.

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board May 2005; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

The **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Contact Person for More Information: Tony Johnson, Office of the Director, NCID, CDC, Mailstop E–51, 1600 Clifton Road, NE., Atlanta, Georgia 30333, e-mail *tjohnson3@cdc.gov*; telephone 404/498–3249.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 29, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–23599 Filed 11–30–05; 9:56 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH)

Name: Continued Discussions of Concepts for Standards for Approval of Respirators for Use against Chemical, Biological, Radiological and Nuclear Agents (CBRN) and Concepts for Standards for Industrial, Powered Air Purifying Respirator (PAPR).

Date and Time: December 13, 2005, 9 a.m.–4 p.m.

The meeting will address concepts for standards for CBRN Closed Circuit, Self-Contained Breathing Apparatus (SCBA), CBRN PAPR, and Industrial PAPR.

Place: Sheraton Station Square Hotel, 300 W. Station Square Drive, Pittsburgh, Pennsylvania 15219–1162.

Purpose: NIOSH will continue discussions of concepts for standards and testing processes for PAPR and Closed Circuit, SCBA suitable for respiratory protection against CBRN agents. NIOSH will also continue conceptual discussions for establishing Industrial PAPR requirements. NIOSH, along with the United States Army Research, Development and Engineering Command (RDECOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the concept development for the CBRN PAPR standard and the CBRN Closed Circuit, SCBA standard. Participants will be given an opportunity to ask questions on these topics and to present individual comments for consideration. Interested participants may obtain a copy of the CBRN PAPR, the Industrial PAPR concept paper, the CBRN Closed Circuit and SCBA concept paper, as well as earlier versions of other concept papers used during the standard development effort, from the NIOSH National Personnel Protective Technology Laboratory (NPPTL) Web site, address: *http://www.cdc.gov/niosh/npptl.* The November 4, 2005 concept paper will be used as the basis for discussion at the public meeting. Municipal, state, and Federal responder groups, particularly in locations considered potential terrorism targets, have been developing and modifying response and consequence management plans for domestic security and preparedness issues. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resource requirements for coping with such events. The Federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, the National Fire Protection Association (NFPA), and the Occupational Safety and Health Administration have entered into a Memorandum of Understanding defining each agency or organization's role in developing, establishing, and enforcing standards or guidelines for responders' respiratory protective devices. NIST has initiated Interagency Agreements with NIOSH and RDECOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate, and approve respirators. NIOSH, RDECOM, and NIST hosted public meetings on April 17 and 18, 2001; June 18 and 19, 2002; October 16 and 17, 2002; April 29, 2003; June 25, 2003; October 16, 2003; May 4, 2004; December 15, 2004; and July 19 and 20, 2005; presenting their progress in assessing respiratory protection needs of responders to CBRN incidents. The methods or models for developing hazard and exposure estimates, and the status in evaluating test methods and performance standards that may be applicable as future CBRN respirator standards or guidelines were discussed at these meetings. Three NIOSH CBRN respirator standards and several NFPA standards for ensembles, SCBA, and protective clothing were the first adopted by the U.S. Department of Homeland Security (DHS). On February 26, 2004, DHS adopted, as DHS standards, three NIOSH criteria for testing and certifying respirators for protection against CBRN exposures. NIOSH uses the criteria to test (1) SCBA for use by emergency responders against CBRN, (2) PAPR for use by emergency responders against CBRN exposures,

and (3) escape respirators for protection against CBRN.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 150 people. Interested parties should make hotel reservations directly with the Sheraton Station Square Hotel (412–261–2000 or 800–325–3535) before the cut-off date of December 8, 2005. A special group rate of $91 per night for meeting guests has been negotiated for this meeting. The NIOSH/NPPTL Public Meeting must be referenced to receive this rate. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*npptlevents@cdc.gov*) or fax (304–225–2003) to the NPPTL Event Management Office. A registration form may be obtained from the NIOSH Homepage (*http://www.cdc.gov/niosh*) by selecting conferences and then the event.

An opportunity to make presentations regarding the discussions of concepts for standards and testing processes for PAPR standards and for Closed Circuit, SCBA standards suitable for respiratory protection against CBRN agents and PAPRs for industrial applications of NIOSH-approved CBRN respirators will be given. Requests to make such presentations at the public meeting should be made by e-mail to the NPPTL Event Management Office (*npptlevents@cdc.gov*). All requests to present should include the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes. After reviewing the requests for presentation, NPPTL Event Management will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meeting should be mailed to: NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov*. E-mail attachments should be formatted in Microsoft Word. Comments regarding the Industrial PAPR should reference Docket Number NIOSH–008 in the subject heading. Comments regarding CBRN PAPR should reference Docket Number NIOSH–010 in the subject heading. Comments regarding the CBRN Closed Circuit, SCBA should reference Docket Number NIOSH–039.

Due to administrative issues that had to be resolved, the **Federal Register** notice is being published on short notice.

FOR FURTHER INFORMATION CONTACT: NPPTL Event Management, 3604 Collins Ferry Road, Suite 100, Morgantown, West Virginia 26505–2353, Telephone 304–599–5941 x138, Fax 304–225–2003, E-mail *npptlevents@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 30, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–23653 Filed 12–1–05; 10:03 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records title, ''Implantable Cardioverter-Defibrillator (ICD) System, System No. 09–70–0548.'' National coverage determinations (NCDs) are determinations by the Secretary with respect to whether or not a particular item or service is covered nationally under title XVIII of the Social Security Act (the Act) § 1869(f)(1)(B). In order to be covered by Medicare, an item or service must fall within one or more benefit categories contained within Part A or Part B, and must not be otherwise excluded from coverage. Moreover, with limited exceptions, the expenses incurred for items or services must be ''reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,'' § 1862(a)(1)(A). CMS has determined that the evidence is adequate to conclude that an implantable cardioverter-defibrillator (ICD) is reasonable and necessary in several patient groups where certain criteria for these patients have been met. The reasonable and necessary determination requires that patients meet the ICD implantation criteria set forth in the decision memorandum and are consistent with the trials discussed. Collection of these data elements allows that determination to be made.

The purpose of this system is to provide reimbursement for ICDs and assist in the collection of data on patients receiving an ICD for primary prevention to a data collection process to assure patient safety and protection and to determine that the ICD is reasonable and necessary. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) to an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATE: CMS filed a new SOR report with the Chair of the House Committee on Government Reform and

Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 28, 2005 . We will not disclose any information under a routine use until 30 days after publication. We may defer implementation of this SOR or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comment to the CMS Privacy Officer, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Rosemarie Hakim, Epidemiologist, Office of Clinical Standards and Quality, CMS, Mail Stop C1–09–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1849, Telephone Number (410) 786–3934, *Rosemarie.Hakim@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: We desire to ensure that defibrillator implantation only occurs in those patients who are most likely to benefit and that the procedures are done only by competent providers in facilities with a history of good outcomes and a quality assessment/improvement program to identify providers with poor outcomes and other areas for improvement. As mentioned above, we are concerned that the available evidence does not allow providers to target these devices to patients who will clearly derive benefit. In order to provide maximum protection to our beneficiaries, CMS will require that reimbursement for ICDs for primary prevention of sudden cardiac death occur only if the beneficiary receiving the defibrillator implantation is enrolled in either a FDA approved category B IDE clinical trial, a trial under the CMS Clinical Trial Policy or a qualifying data collection system including approved clinical trials and registries.

The submission of data on patients receiving an ICD for primary prevention to a data collection process is needed to assure patient safety and protection and to determine that the ICD is reasonable and necessary. These patient protections and safeguards require that data be made available in some form to providers and practitioners to inform their decisions, monitor performance quality, benchmark and identify best practices. The reasonable and necessary determination requires that patients meet the ICD implantation criteria set forth in this decision memorandum and are consistent with the trials discussed. Collection of these data elements allows that determination to be made. We will also ensure that any future data collection system are consistent with the Standards for Privacy of Individually Identifiable Health Information and that all issues related to patient confidentiality, privacy, and compliance with other Federal laws will be resolved prior to the collection of any data.

There will be an initial ICD registry so that data collection can begin with the posting of this decision. A data submission mechanism will be used that is already in use by Medicare participating hospitals to submit quality data. Initial hypotheses to be addressed by the registry will include the following:

1. The clinical characteristics of the registry patients receiving ICDs are similar to those of patients involved in the primary prevention randomized clinical trials.
2. The indications for ICD implantation in registry patients are similar to those in the primary prevention randomized clinical trials.
3. The in-hospital procedure related complications for registry patients is similar to those in the primary prevention randomized clinical trials.
4. Certified providers competent in ICD implantation are implanting ICD devices in registry patients.
5. Registry patients who receive an ICD represent patients for which current clinical guidelines and the evidence base recommend implantation.
6. The clinical characteristics and indications for ICD implantation in registry patients do not differ significantly among facilities.
7. The clinical characteristics and indications for ICD implantation in registry patients do not differ significantly among providers.
8. The in-hospital procedure related complications for ICD implantation in registry patients does not differ significantly among facilities.
9. The in-hospital procedure related complications for ICD implantation in registry patients does not differ significantly among providers.
10. The in-hospital procedure related complications for ICD implantation in registry patients does not differ significantly among device manufacturer, types, and/or programming.

Data elements necessary to address these hypotheses are the minimum necessary to determine that the ICD is reasonable and necessary. CMS reserves the right to modify these hypotheses and elements as other evidence becomes available. Initially, an ICD registry will be maintained using a data submission mechanism that is already in use by Medicare participating hospitals to submit quality data. Data collection will be completed using the ICDA (ICD Abstraction Tool) and transmitted via Quality Network Exchange (QNET) to the Iowa Foundation for Medical Care (IFMC) who will collect and maintain registry data. CMS will post additional information on data submission on its coverage website, through the MedLearn system, and through the QNET education program.

This registry is only an initial data collection process. A follow-on registry that will replace the QNET registry and address additional hypotheses is currently being explored with specialty societies, industry, health plans and hospital associations. Industry has committed to developing a system to more closely evaluate the benefit in patients with LVEF 30–35%, NYHA Class IV in CRT–D, or NIDCM of 3–9 months duration. Specialty societies have indicated interest in more clearly defining appropriate facility and provider standards. CMS will continue to encourage the public discussion of the appropriate replacement registry. We will also ensure that any future data collection system is consistent with the Standards for Privacy of Individually Identifiable Health Information and that all issues related to patient confidentiality, privacy, and compliance with other Federal laws will be resolved prior to the collection of any data.

Finally, technology exists to easily capture the type of data collected in our initial registry and to prevent repeated entry of identical data into the several trials or registries in which hospitals participate. CMS is interested in public input into how the Agency might assist the healthcare community in creating a single data entry system.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for linking coverage decisions to the collection of additional data is derived from Sec. 1862(a)(1)(A) of the Act, which states that Medicare may not provide payment for items and services unless they are ''reasonable and necessary'' for the treatment of illness or injury. In some cases, CMS will determine that an item or service is only reasonable and necessary when specific data collections accompany the provisions of the

service. In these cases, the collection of data is required to ensure that the care provided to individual patients will improve health outcomes.

B. Collection and Maintenance of Data in the System

CMS has determined that the evidence is adequate to conclude that an implantable cardioverter-defibrillator (ICD) is reasonable and necessary for the following:

- Patients with ischemic dilated cardio-myopathy, documented prior myocardial infarction (MI), New York Heart Association (NYHA) Class II and III heart failure, and measured left ventricular ejection fraction (LVEF) ≤ 35%;
- Patients with nonischemic dilated cardiomyopathy > 9 months, NYHA Class II and III heart failure, and measured LVEF ≤ 35%;
- Patients who meet all current CMS coverage requirements for a cardiac resynchronization therapy device and have NYHA Class IV heart failure.

The collected information will contain name, address, telephone number, Health Insurance Claim Number (HICN), geographic location, race/ethnicity, gender, and date of birth, as well as, background information relating to Medicare or Medicaid issues.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release ICD information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of ICD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to provide reimbursement for ICDs and assist in the collection of data on patients receiving an ICD for primary prevention to a data collection process to assure patient safety and protection and to determine that the ICD is reasonable and necessary.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. To provide reimbursement for ICDs and assist in the collection of data on patients receiving an ICD for primary prevention to a data collection process to assure patient safety and protection and to determine that the ICD is reasonable and necessary,

b. Contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or

c. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

Other Federal or state agencies in their administration of a Federal health program may require ICD information in order to provide reimbursement for ICDs and assist in the collection of data on patients receiving an ICD for primary prevention to a data collection process to assure patient safety and protection and to determine that the ICD is reasonable and necessary.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The ICD data will provide for research or in support of evaluation projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of Congress in resolving an issue relating to a matter before CMS. The member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs. Other agencies may require ICD information for the purpose of combating fraud and abuse in such Federally funded programs.

B. *Additional Provisions Affecting Routine Use Disclosures.* This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations (CFR) Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E.) Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even if not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Lori Davis,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0548

SYSTEM NAME:

''Implantable Cardioverter-Defibrillator (ICD) System;'' HHS/CMS/OCSQ.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CMS has determined that the evidence is adequate to conclude that an implantable cardioverter-defibrillator (ICD) is reasonable and necessary for the following:

- Patients with ischemic dilated cardio-myopathy, documented prior myocardial infarction (MI), New York Heart Association (NYHA) Class II and III heart failure, and measured left ventricular ejection fraction (LVEF) ≤ 35%;
- Patients with nonischemic dilated cardiomyopathy > 9 months, NYHA Class II and III heart failure, and measured LVEF ≤ 35%;
- Patients who meet all current CMS coverage requirements for a cardiac resynchronization therapy device and have NYHA Class IV heart failure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data collection should include baseline patient characteristics. The collected information will contain name, address, telephone number, Health Insurance Claim Number (HICN), geographic location, race/ethnicity, gender, and date of birth, as well as, background information relating to Medicare or Medicaid issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for linking coverage decisions to the collection of additional data is derived from Sec. 1862 (a) (1) (A) of the Social Security Act (the Act), which states that Medicare may not provide payment for items and services unless they are ''reasonable and necessary'' for the treatment of illness or injury. In some cases, CMS will determine that an item or service is only reasonable and necessary when specific data collections accompany the provision of the service. In these cases, the collection of data is required to ensure that the care provided to individual patients will improve health outcomes.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to provide reimbursement for ICDs and assist in the collection of data on patients receiving an ICD for primary prevention to a data collection process to assure patient safety and protection and to determine that the ICD is reasonable and necessary. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) to an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Provide reimbursement for ICDs and assist in the collection of data on patients receiving an ICD for primary prevention to a data collection process to assure patient safety and protection and to determine that the ICD is reasonable and necessary,

b. Contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or

c. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a member of congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures. This system contains Protected Health Information (PHI) as defined by the Department of Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations (CFR) Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E.) Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable information, except

pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored electronically.

RETRIEVABILITY:

The data are retrieved by an individual identifier *i.e.*, name of beneficiary or provider.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implements appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period of 10 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Clinical Standards and Quality, CMS, Room S2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For the purpose of access, the subject individual should write to the system manager who will require the system name, address, age, gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable).

RECORD ACCESS PROCEDURE:

For the purpose of access, use the same procedures outlines in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5).

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above and reasonable identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Records maintained in this system are derived from Carrier and Fiscal Intermediary Systems of Records, Common Working File System of Records, clinics, institutions, hospitals and group practices performing the procedures, and outside registries and professional interest groups.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E5–6808 Filed 12–2–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new SOR titled, ''Fluoro-Deoxy Glucose (FDG) Positron Emission Tomography (PET) for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, Testicular and Other Cancers (PET 6), HHS/CMS/OCSQ, System No. 09–70–0549.'' National Coverage Determinations (NCD) are determinations by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act (the Act) § 1869(f)(1)(B). In order to be covered by Medicare, an item or service must fall within one or more benefit categories contained in Part A or Part B, and must not be otherwise excluded from coverage.

In our review of the other cancer indications, we found sufficient evidence to determine that PET scans are no longer experimental. However, the evidence was insufficient to reach a conclusion that FDG PET is reasonable and necessary in all instances. A sufficient inference of benefit, however, can be drawn to support limited coverage if certain safeguards for patients are provided. This inference is based on both the physiological basis for FDG PET usefulness in cancer, as well as, evidence of a positive benefit of FDG PET for patients with several other cancers for which there is evidence of sufficient quality to warrant coverage.

The purpose of this system is to collect and maintain information on Medicare beneficiaries receiving FDG PET scans for indications for when there is not sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary unless they are enrolled in an approved study. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) to an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a Congressional

representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs. We have provided background information about the new system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATE: CMS filed new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 28, 2005. We will not disclose any information under a routine use until 30 days after publication. We may defer implementation of this SOR or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to the CMS Privacy Officer, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Rosemarie Hakim, Epidemiologist, Office of Clinical Standards and Quality, CMS, Mail Stop C1–09–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1849. She can be reached by telephone at (410) 786–3934, or via e-mail at *Rosemarie.Hakim@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: CMS has determined that there is sufficient evidence to conclude that an FDG PET for the detection of pre-treatment metastases in one of six cancers: Newly diagnosed cervical cancer subsequent to conventional imaging that is negative for extra-pelvic metastasis is reasonable and necessary as an adjunct test. However for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, Testicular and other Cancers, CMS determined that the evidence is sufficient to conclude that an FDG PET is reasonable and necessary only when the provider is participating in and patients are enrolled in one of the following types of prospective clinical studies: a clinical trial of FDG PET that meets the Food and Drug Administration category B investigational device exemption or an FDG PET clinical study that is designed to prospectively collect information at the time of the scan to assist in patient management. All other previous positive national coverage determination for FDG PET will remain in effect. All other previous non-coverage determination for FDG PET based on evidence of lack of benefit will remain in effect.

To qualify for payment, providers must prescribe FDG PET only for patients with a set of clinical criteria specific to each cancer type and stage. In addition, CMS is requiring stakeholders including specialty societies, industry, independent scanning facilities, health plans and hospital associations to create systematic clinical data bases or registries in order to be reimbursed for PET scans done for all other cancer indications not previously specified in an NCD, including: Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, and Testicular Cancers.

CMS will consider prospective data collection systems to be qualified if they provide assurance that the specific hypotheses are addressed and they collect appropriate data elements. The data collection shall include baseline patient characteristics: Indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; cancer type, grade, and stage; long term patient outcomes; disease management changes; and anti-cancer treatment received. The clinical data collection must ensure that specific hypotheses are identified prospectively; hospitals and providers are qualified to provide FDG PET and interpret the results; and participating hospitals and providers collect prospective data at the time of payment on all enrolled patients undergoing FDG PETs for cancer therapeutic or diagnostic indications. Data elements will be transmitted to CMS for evaluation of the short and long term benefits of the FDG PET for its beneficiaries and inform future clinical decision making. CMS shall be assured that all applicable patient confidentiality, privacy, and other Federal laws are complied with, including the Standards for Privacy of Individually Identifiable Health Information.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for linking coverage decisions to the collection of additional data is derived from sec. 1862(a)(1)(A) of the Act, which states that Medicare may not provide payment for items and services unless they are ''reasonable and necessary'' for the treatment of illness or injury. In some cases, CMS will determine that an item or service is only reasonable and necessary when specific data collections accompany the provision of the service. In these cases, the collection of data is required to ensure that the care provided to individual patients will improve health outcomes.

B. Collection and Maintenance of Data in the System

The data collection shall include baseline patient characteristics: Indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; cancer type, grade, and stage; long term patient outcomes; disease management changes; and anti-cancer treatment received. The collected information will also contain, but is not limited to, name, address, telephone number, Health Insurance Claim Number (HICN), geographic location, race/ethnicity, gender, and date of birth, as well as, background information relating to Medicare or Medicaid issues.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release PET 6 information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of PET 6. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to collect and maintain information on

Medicare beneficiaries receiving FDG PET scans for indications for which there is not sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary unless they are enrolled in an approved study.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require PET 6 information in order to collect information on Medicare beneficiaries receiving FDG PET scans for sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The PET 6 data will provide for research or in support of evaluation projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use this data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of Congress in resolving an issue relating to a matter before CMS. The member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not necessarily limited to Medicare administrative contractors, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably

necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require PET 6 information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. *Additional Provisions Affecting Routine Use Disclosures.* This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations parts 160 and 164, 65 FR 82462 (12–28–00), subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even if not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Lori Davis,

Acting Chief Operating Officer,Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0549

SYSTEM NAME:

''Fluoro-Deoxy Glucose (FDG) Positron Emission Tomography (PET) for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, Testicular and Other Cancers (PET 6), HHS/CMS/OCSQ, System No. 09–70–0549.''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Providers participating in and patients enrolled in one of the following types of prospective clinical studies: A clinical trial of FDG PET that meets the Food and Drug Administration category B investigational device exemption or an FDG PET clinical study that is designed to prospectively collect information at the time of the scan to assist in patient management.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data collection should include baseline patient characteristics: Indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; cancer type, grade, and stage; long term patient outcomes; disease management changes; and anti-cancer treatment received. The collected information will also contain, but is not limited to, name, address, telephone number, Health Insurance Claim Number (HICN), geographic location, race/ethnicity, gender, and date of birth, as well as, background information relating to Medicare or Medicaid issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for linking coverage decisions to the collection of additional data is derived from sec. 1862(a)(1)(A) of the Social Security Act, which states that Medicare may not provide payment for items and services unless they are ''reasonable and necessary'' for the treatment of illness or injury. In some cases, CMS will determine that an item or service is only reasonable and necessary when specific data collections accompany the provisions of the service. In these cases, the collection of data is required to ensure that the care provided to individual patients will improve health outcomes.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain information on Medicare beneficiaries receiving FDG PET scans for indications when there is not sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary unless they are enrolled in an approved study. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to

fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) to an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a Congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not necessarily limited to Medicare administrative contractors, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures. This system contains Protected Health Information (PHI) as defined by the Department of Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations (CFR) Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), subparts A and E.) Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even if not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored electronically.

RETRIEVABILITY:

The data are retrieved by an individual identifier *i.e.*, name of beneficiary or provider.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period of 10 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Clinical Standards and Quality, CMS, Room S2–26–17,

7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For the purpose of access, the subject individual should write to the system manager who will require the system name, address, age, gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable).

RECORD ACCESS PROCEDURE:

For the purpose of access, use the same procedures outlines in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5).

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORY:

The data on patients receiving the FDG PET will be collected from providers. In addition, CMS is requiring stakeholders including specialty societies, industry, independent scanning facilities, health plans and hospital associations to create systematic clinical data bases or registries in order to be reimbursed for PET scans done for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, Testicular and other Cancers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E5–6810 Filed 12–2–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0445]

Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Acne Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of eligibility; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following conditions as part of FDA's ongoing review of over-the-counter (OTC) drug products: Triclosan, 0.2 to 0.5 percent and 0.3 to 1.0 percent, as a topical acne active ingredient in leave-on and rinse-off dosage forms, respectively. FDA has reviewed a time and extent application (TEA) for these conditions and determined that they are eligible for consideration in its OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether these conditions can be generally recognized as safe and effective (GRAS/E) for their proposed OTC use.

DATES: Submit data, information, and general comments by March 6, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0445, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments, Data, and Information'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug Evaluation and Research (mail stop 5411), Food and Drug Administration, 10903 New Hampshire Ave., bldg. 22, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term ''condition'' means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14(a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEA that FDA reviewed (Ref. 1) and FDA's evaluation of the TEA (Ref. 2) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j)

(section 301(j) of the Federal Food, Drug, and Cosmetic Act) was deleted from the TEA before it was placed on public display.

II. Request for Comments, Data, and Information

FDA has determined that the information submitted in this TEA satisfies the criteria of § 330.14(b). FDA will evaluate both leave-on formulations containing 0.2 to 0.5 percent triclosan and rinse-off formulations containing 0.3 to 1.0 percent triclosan for inclusion in the monograph for OTC topical acne drug products (21 CFR part 333, subpart D). Accordingly, FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of this active ingredient for this use, so that FDA can determine whether it can be GRAS/E and not misbranded under recommended conditions of OTC use.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments, data, and information. Submit three copies of all comments, data, and information. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

III. Marketing Policy

Under § 330.14(h), any product containing the conditions for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Amended TEA for triclosan as an acne active ingredient submitted by CIBA Specialty Chemicals Corp., on April 22, 2004.

2. FDA's evaluation and comments on the TEA for triclosan.

Dated: November 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23570 Filed 12–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0444]

Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Dandruff Control Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of eligibility; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following conditions as part of FDA's ongoing review of over-the-counter (OTC) drug products: Climbazole, 0.1 to 0.5 percent and 0.5 to 2.0 percent, as a dandruff control active ingredient in leave-on and rinse-off dosage forms, respectively. FDA has reviewed a time and extent application (TEA) for these conditions and determined that they are eligible for consideration in its OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether these conditions can be generally recognized as safe and effective (GRASE) for their proposed OTC use.

DATES: Submit data, information, and general comments by March 6, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0444, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments, Data, and Information'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug Evaluation and Research (mail stop 5411), Food and Drug Administration, 10903 New Hampshire Ave., bldg. 22, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term ''condition'' means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14(a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in

the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEA that FDA reviewed (Ref. 1) and the FDA's evaluation of the TEA (Ref. 2) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j) (section 301(j) of the Federal Food, Drug, and Cosmetic Act) was deleted from the TEA before it was placed on public display.

II. Request for Comments, Data, and Information

FDA has determined that the information submitted in this TEA satisfies the criteria of § 330.14(b). FDA will evaluate both leave-on formulations containing 0.1 to 0.5 percent climbazole and rinse-off formulations containing 0.5 to 2.0 percent climbazole for inclusion in the monograph for OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis (21 CFR part 358, subpart H). Accordingly, FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of this active ingredient for this use, so that FDA can determine whether it can be GRAS/E and not misbranded under recommended conditions of OTC use. The TEA did not include an official or proposed United States Pharmacopeia-National Formulary (USP–NF) drug monograph for climbazole. According to § 330.14(i), an official or proposed USP–NF monograph for climbazole must be included as part of the safety and effectiveness data for this ingredient. Interested parties should provide an official or proposed USP–NF monograph.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments, data, and information. Submit three copies of all comments, data, and information. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

III. Marketing Policy

Under § 330.14(h), any product containing the conditions for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. TEA for climbazole as a dandruff control active ingredient submitted by Steinberg & Associates on behalf of Symrise, Inc., on December 15, 2004.

2. FDA's evaluation and comments on the TEA for climbazole.

Dated: November 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23569 Filed 12–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0446]

Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Sunscreen Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of eligibility; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following conditions as part of FDA's ongoing review of over-the-counter (OTC) drug products: Bisoctrizole, up to 10 percent, as a sunscreen single active ingredient and in combination with other sunscreen active ingredients; and bemotrizinol, up to 10 percent, as a sunscreen single active ingredient and in combination with other sunscreen active ingredients. FDA reviewed time and extent applications (TEAs) for these conditions and determined that they are eligible for consideration in our OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether these conditions can be generally recognized as safe and effective (GRAS/E) for their proposed OTC use.

DATES: Submit data, information, and general comments by March 6, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0446, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Request for Comments, Data and Information'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug

Evaluation and Research (mail stop 5411), Food and Drug Administration, 10903 New Hampshire Ave., bldg. 22, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term ''condition'' means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14(a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEAs that FDA reviewed (Refs. 1 and 2) and FDA's evaluation of the TEAs (Refs. 3 and 4) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j) (section 301(j) of the Federal Food, Drug, and Cosmetic Act) was deleted from the TEAs before they were placed on public display.

II. Request for Comments, Data, and Information

FDA has determined that the information submitted in this TEA satisfies the criteria of § 330.14(b). FDA will evaluate bisoctrizole, up to 10 percent, and bemotrizinol, up to 10 percent, as sunscreen single active ingredients and in combination with other existing monograph sunscreen active ingredients, for inclusion in the monograph for OTC sunscreen drug products (21 CFR part 352). Accordingly, FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of these ingredients as single active ingredients for this use so that FDA can determine whether they can be GRAS/E and not misbranded under recommended conditions of OTC use. Additional data should be included to establish the safety and effectiveness of sunscreen drug products containing a combination of bisoctrizole and/or bemotrizinol with other existing sunscreen monograph active ingredients.

Neither of the TEAs included an official or proposed United States Pharmacopeia-National Formulary (USP–NF) drug monograph. According to § 330.14(i), an official or proposed USP–NF monograph for each ingredient must be included as part of the safety and effectiveness data for these ingredients. Interested parties should provide an official or proposed USP–NF monograph for each ingredient.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments, data, and information. Submit three copies of all comments, data, and information. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

III. Marketing Policy

Under § 330.14(h), any product containing the conditions for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. TEA's for bisoctrizole submitted by CIBA Specialty Chemicals Corp., April 11, 2005.

2. TEA's for bemotrizinol submitted by CIBA Specialty Chemicals Corp., April 11, 2005.

3. FDA's evaluation and comments on the TEA for bisoctrizole.

4. FDA's evaluation and comments on the TEA for bemotrizinol.

Dated: November 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23576 Filed 12–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Modified Recombinant Anti-Tumor RNase

Dianne L. Newton, David F. Nellis, Susanna M. Rybak (NCI)

U.S. Provisional Application filed 30 Sep 2005 (HHS Reference No. E–265–2005/0-US–01)

Licensing Contact: Jesse Kindra; 301/435–5559; *kindraj@mail.nih.gov*.

Members of the ribonuclease A (RNase A) superfamily such as Onconase® or rapLR1 have potential for clinical use either alone, combined with drugs, or as the toxic component of targeted therapy. In targeted therapies,

the RNase is conjugated to a targeting moiety, such as an antibody. Typically the RNase is chemically modified before it can be linked to another molecule. These methods usually require a large excess of unmodified RNase. The current invention provides genetically modified thiol-containing RNase molecules that can be used in much lower amounts to generate chemical conjugates. Additionally, the inserted thiol group provides the advantage of a site-directed and specific attachment of the RNase to targeting moieties. The invention also provides methodologies for generating cysteine-modified RNase conjugates and methods of using such conjugates.

Methods and Compositions for the Inhibition of SARS-CoV Replication Propagation and Transmission

Sharon M. Wahl and Gang Peng (NIDCR)
U.S. Provisional Application No. 60/713,724 filed 06 Sep 2005 (HHS Reference No. E–253–2005/0-US–01)
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development is a method of inhibiting SARS-CoV replication, propagation and transmission using 2-cyano-3,12-dioxooleana-1,9-dien-28-oic (CDDO). Severe acute respiratory syndrome (SARS) is an infectious atypical pneumonia that has recently been recognized in patients in 32 countries and regions. The atypical pneumonia with unknown etiology was initially observed in Guangdong Province, China. This observation was followed by reports from Hong Kong, Vietnam, Singapore, Canada and Beijing of severe febrile respiratory illness that spread to household members and health care workers. This disease was later designated ''severe acute respiratory syndrome (SARS)'' by the World Health Organization (WHO). Until May 19, 2003, a cumulative total of 7,864 SARS cases were reported to WHO from 29 countries. A total of 643 deaths (case-fatality proportion: 8.2%) were reported.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Methods of Treating and Preventing Renal Cancer Using a Dimethane Sulfonate Compound

Drs. Susan Mertins, David Covell and Geoffrey Patton (STB, NCI-Fredrick), Melinda Hollingshead (BTB, DTB, NCI-Fredrick), B. Rao Vishnuvajjala (PRB, DTP, NCI-Bethesda), and Susan Bates (CTB, CCR, NCI-Bethesda).
HHS Reference No. E–249–2005/0-PCT–01
Licensing Contact: George G. Pipia; 301/435–5560; *pipiag@mail.nih.gov.*

Currently only a few small molecule inhibitors are effective in patients with renal cell carcinoma. Approximately 30,000 patients per year are diagnosed with this disease but many of them are untreatable because of intrinsic drug resistance, and efficient drug transport and detoxification mechanisms. This invention described and claimed in the patent application describes a series of dimethane sulfonate compounds based on NSC 281612 that are suitable for the treatment of renal cancer. Compositions comprising a pharmaceutically-acceptable carrier and a compound, or a salt suitable for use in the treatment or prevention of renal cancer are also described. The anti-tumor activity of NSC 281612 has been established in vivo against human renal tumor xenografts in mice. Suitable dosing and administration schedules for treatment of renal tumors have also been determined in this study.

Noncovalent HIV Env-CD4 Complexes for Generation of Broadly Neutralizing Antibodies

Jinhai Wang and Michael Norcross (FDA)
U.S. Provisional Application No. 60/711,985 filed 25 Aug 2005 (HHS Reference No. E–173–2005/0-US–01)
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

HIV vaccine technology based on HIV envelope protein (Env) have been less successful than anticipated to date. One possible reason for this is the potential conformational masking of neutralizing epitopes. The current technology combines HIV Env and cell surface polypeptides CD4 in non-covalent complexes to expose epitopes not present on the uncomplexed Env molecules. These complexes can thus be used to elicit neutralizing antibodies when used as vaccines, immunogenic compositions or immunotherapies. The CD4 inducing epitopes found in regions of the virus that are most conserved across clades are unmasked, thus making this technology potentially effective against HIV viruses from several clades. Additionally, cell surface polypeptide CD4 is in its native conformation and masked by Env, therefore it is unlikely to induce autoantibodies.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors. If you are interested in additional information on this collaborative opportunity, please contact Ms. Beatrice A. Droke at *bdroke@oc.fda.gov.*

Synthesis of Indenoisoquinoliniums and Methods of Use

Yves Pommier *et al.* (NCI).
PCT Application No. PCT/US2005/08491 filed 15 Mar 2005 (HHS Reference No. E–058–2005/0-PCT–02).
Licensing Contact: George G. Pipia; 301/435–5560; *pipag@mail.nih.gov.*

The technology relates to compounds and methods for treating cancer. Specifically, novel Topoisomerase I (Top I) inhibitors are disclosed. Top I is a DNA-modifying enzyme whose activity is required for viability of rapidly dividing cells such as cancer cells. Top I is a target of the potent anti-cancer drug Camptothecin, which inhibits Top I activity. However, camptothecin-based cancer therapies can produce side effects caused by toxicity of camptothecin.

The disclosed compounds are substituted indenoisoquinolinium compounds that inhibit Top I activity. The compounds exhibit anti-cancer activity and have chemical properties that may facilitate the development of novel anti-cancer therapies with reduced toxicity.

Confocal Fiber-Optic Laser Method for Intraocular Lens Power Measurement

Ilko K. Ilev (FDA).
U.S. Provisional Application No. 60/668,239 filed 03 Mar 2005 (HHS Reference No. E–039–2005/0-US–01)
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development is a novel apertureless fiber-optic laser confocal design. Intraocular lens (IOL) dioptic power is a fundamental parameter whose precise measurement is of critical importance for characterizing and evaluating the effectiveness and safety of IOL's. The present invention relates to a simple, accurate, objective, quick and relatively inexpensive method for IOL power measurement. The principle of operation of this method is based on an apertureless fiber-optic laser confocal design. The key element in this design is a single-mode optical fiber coupler that simultaneously performs several essential functions. First, it provides effective launching and delivery of the input laser emission. Second, the fiber tip serves as a point light source used

for formation of a collimated Gaussian laser beam profile for IOL testing. Third, the tip serves as a highly sensitive point receiver of the back reflectance laser emission. Fourth, the fiber coupler provides delivery of the spatially separated back reflected laser emission to a detector system. The combination of these unique features of the confocal fiber-optic laser method provides high accuracy (exceeding 1 μm) in spatially locating the IOL focal point and measuring the IOL power. A unique feature of this method is that it allows for measurement of a wide range of both positive and negative powers including high-magnification IOL's with power greater than ±20 diopters. The simple and high-sensitive IOL power testing method will provide the CDRH/FDA and the scientific community with an independent source of measurement data and information for evaluating the effectiveness and safety of novel IOL products.

Minimally Immunogenic Variants of SDR-Grafted Humanized Antibody CC49 and Their Use

Syed Kashmiri (NCI), Jeffrey Schlom (NCI), and Eduardo Padlan (NIDDK)
U.S. Provisional Application No. 60/493,903 filed 29 Aug 2003 (HHS Reference No. E–323–2003/0-US–01) and PCT Application No. PCT/US04/28004 filed 27 Aug 2004 (HHS Reference No. E–323–2003/0-PCT–02).
Licensing Contact: Michelle Booden; 301/451–7337; *boodenm@mail.nih.gov.*

Tumor Associated Glycoprotein 72 (TAG)–72 is an oncofetal antigen expressed on a majority of human carcinomas, including colorectal, gastric, pancreatic, breast, lung, and ovarian. The murine monoclonal antibody (mAb) CC49 specifically recognizes TAG–72 and has a higher affinity for TAG–72 than its predecessor, B72.3.

The present invention relates to humanized monoclonal antibodies that have high binding affinity for the tumor-associated glycoprotein (TAG)–72 with minimal immunogenicity. This anti-TAG–72 antibody binds to the same epitope as the CC49 murine variant developed at the National Cancer Institute. The variants of CC49 described in this patent application have been shown to have a decreased immune response, with comparable binding affinity, than the parent murine antibodies.

These variants have potential benefits for use in the detection and/or treatment of a range of human carcinomas. Certain fields of use may not be available. Please contact OTT for information regarding the availability of specific fields of use. This variant was published in Kashmiri *et al.*, ''Minimizing Immunogenicity of the SDR-grafted Humanized Antibody CC49 by Genetic Manipulation of the Framework Residues,'' Molecular Immunology, 40 (2003), 337–349.

Restenosis/Atherosclerosis Diagnosis, Prophylaxis, and Therapy

Toren Finkel *et al.* (NHLBI)
U.S. Patent No. 6,183,752 issued 06 Feb 2001 (HHS Reference No. E–258–1994/0-US–01)
Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

This technology relates to the compositions and methods for the diagnosis, prevention, and therapy of restenosis and atherosclerosis. It involves the use of an agent for decreasing viral load, preferably a vaccine, against cytomegalovirus (CMV) and p53, including a method for providing the therapy and administering the agent. This invention thus relates to stimulating an immune response, preferably a cellular immune response, directed against CMV and p53 to inhibit or prevent restenosis, atherosclerosis, and smooth muscle proliferation. Therefore, the technology offers methods for inducing cell death with the purpose of inhibiting smooth muscle proliferation as a means of preventing or treating restenosis and atherosclerosis.

Dated: November 14, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–6802 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mitotic Spindle ASPM as a Diagnostic Marker for Neoplasia and Uses Thereof

Paul K. Goldsmith, Vladmir Larionov, Natalay Kouprina and John I. Risinger (NCI)
U.S. Provisional Application No. 60/696,212 filed 01 Jul 2005 (HHS Reference No. E–210–2005/0–US–01)
Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

Cancer is responsible for approximately 23% of deaths in the United States of America. A high percentage of these deaths are caused by the lack of a precise diagnostic method that can detect malignancy in a particular tissue at an early stage. This invention provides for diagnostic methods, compositions, and kits that are useful for identifying neoplasia by measuring Abnormal Spindle-like Microcephaly associated (ASPM) expression in a patient sample. The ASPM gene is the human ortholog of the Drosophila melanogaster 'abnormal spindle' gene (asp), which is essential for normal mitotic spindle function in embryonic neuroblasts. By measuring ASPM expression levels one can also determine if a particular subject has a higher propensity to develop neoplasia. This invention is particularly useful in detecting neoplasia in hard to diagnose cancers like ovarian and uterine cancer.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Monoclonal Antibodies That Bind or Neutralize Hepatitis B Virus

Robert H. Purcell (NIAID) *et al.*
U.S. Provisional Application No. 60/644,309 filed 14 Jan 2005 (HHS Reference No. E–144–2004/0-US–01)
Licensing Contact: Chekesha S. Clingman; 301/435–5018; *clingmac@mail.nih.gov.*.

Hepatitis B virus (HBV) chronically infects over 300 million people worldwide. Many of them will die of chronic hepatitis or hepatocellular

carcinoma. The present technology relates to the isolation and characterization of a novel neutralizing chimpanzee monoclonal antibody to HBV. The antibody was identified through a combinatorial antibody library constructed from bone marrow cells of a chimpanzee experimentally infected with HBV. The selected monoclonal antibody has been shown to react equally well with wild-type HBV and the most common neutralization escape mutant variants. Therefore, this monoclonal antibody with high affinity and broad reactivity may have distinct advantages over other approaches to immunoprophylaxis and immunotherapy of chronic HBV infection, as most of the monoclonal antibodies currently in use are not sufficiently and broadly reactive to prevent the emergence of neutralization escape mutants of HBV. This technology describes such antibodies, fragments of such antibodies retaining hepatitis B virus-binding ability, fully human or humanized antibodies retaining hepatitis B virus-binding ability, and pharmaceutical compositions including such antibodies. This invention further describes isolated nucleic acids encoding the antibodies and host cells transformed with nucleic acids. In addition, this invention provides methods of employing these antibodies and nucleic acids in the in vitro and in vivo diagnosis, prevention and therapy of HBV diseases.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Polypeptide Multimers Having Antiviral Activity

Carol Weiss *et al.* (FDA)
PCT Application No. PCT/US03/25295 filed 14 Aug 2003, which published as WO 2005/018666 on 03 Mar 2005 (HHS Reference No. E–155–2003/0-PCT–01)
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

The technology describes polypeptide multimers that have antiviral and immunogenic activity against HIV. These multimers consist of at least one monomer of the highly conserved N and C heptad regions of gp41 in a ratio of at least 2:1 N to C heptad, with the N and C heptads being connected by linkers. The monomer forms homodimers and homotrimers in solution and mimic fusion intermediate structure. Further, the technology also describes a method of raising a broadly neutralizing antibody response to HIV by administering the polypeptide multimers mentioned above. Thus, these polypeptide multimers may be used as antiviral (anti-HIV) agents. Because the structure of these polypeptide multimers mimics the gp41 fusion intermediate, they can also be used to identify compounds that may inhibit the fusion process.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: November 15, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–6803 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended, because the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of information and the discussions would likely to significantly frustrate implementation of the program.

Name of Committee: Advisory Committee to the Director, NIH.

Date: December 1–2, 2005.

Closed: December 1, 2005, 8:30 a.m. to 9:45 a.m.

Agenda: Office of Portfolio Analysis and Strategic Initiatives (OPASI).

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Open: December 1, 2005, 10 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) NIH Director's Report; (2) Clinical and Translational Science Awards; (3) NIH Director's Council of Public Representatives Liaison Report; and (4) update on NIH Neurosciences Blueprint.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Open: December 2, 2005, 9 a.m. to 12 p.m.

Agenda: Among the topics proposed for discussion are: (1) Office of Portfolio Analysis and Strategic Initiatives (OPASI); (2) Public Access Update; and (3) Workgroup Report on Outside Awards for NIH Employees.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Shelly Pollard, ACD Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 31 Center Drive, Building 31, Room 5B64, Bethesda, MD 20892, Phone: (301) 496–0959, *pollards@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 22, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23590 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(6), as amended. The discussions could disclose personal information concerning NCI Staff and/or its contractors, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: December 6, 2005, 8:30 a.m. to 4:45 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: December 6, 2005, 4:45 p.m. to 5:30 p.m.

Agenda: Review intramural program site visit outcomes; Discussion of confidential personnel issues.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: December 7, 2005, 8 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 21, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23589 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Review of P30 and R24 Applications.

Date: December 2, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300. 301–451–2020.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 23, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23586 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, December 5, 2005, 12 p.m. to December 5, 2005, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 16, 2005, 70 FR 69579.

The meeting will be held on December 7, 2005 and will start at 9 a.m. The meeting is closed to the public.

Dated: November 23, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23583 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child and Human Development Special Emphasis Panel, Translation Research.

Date: December 14, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rita Anand, PhD., Scientific Review and Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 23, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23584 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Developmental Neuroscience of Time and Number.

Date: December 14, 2005.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 21, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23591 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Lung Hypoplasia.

Date: December 16, 2005.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929; Center for Medical Rehabilitation Research, 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 23, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23592 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Mentored Training Grant Review.

Date: December 21, 2005.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John F. Connaughton, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughton@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 23, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23593 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, High-Accuracy Protein Structure Modeling.

Date: December 12, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: C Craig Hyde, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, MSC 6200, Bethesda, MD 20892, (301) 435–3825, *hydec@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 23, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23594 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee, Ethics Subcommittee.

Date: December 13, 2005.

Time: 9 a.m. to 11 a.m.

Agenda: Discussions will focus on the development of preliminary recommendations regarding the dissemination of Study findings to the public. For questions or to register please call Circle Solutions at (703) 902–1339 or via e-mail at *ncs@circlesolutions.com.* Registration deadline is noon on December 6, 2005.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5C01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Marion Balsam, MD, Executive Secretary, National Children's Study Advisory Committee, 6100 Executive Boulevard, Bethesda, MD 20892. 301–594–9147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 21, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23595 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Microarrays and Nanoparticles.

Date: December 8, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, (301) 435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of R03 Applications.

Date: December 12–13, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George W. Chacko, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892, (301) 435–1220. *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23585 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Cardiovascular Devices.

Date: November 30, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Glia and Neurodegeneration.

Date: December 1, 2005.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Toby Behar, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neuropathic Pain 3.

Date: December 1, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanisms of Neurodegeneration.

Date: December 1, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Toby Behar, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892. (301) 435–4433. *behart@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RUS E (02) Eurological Sciences.

Date: December 6, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–594–6376. *ansaria@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The Genetics of Psychiatric Disorders.

Date: December 6, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David J. Remondini, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892. 301–435–1038. *remondid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prosthesis Bioengineering Research Partnerships PAR 04–023.

Date: December 8, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jean D. Sipe, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892. 301–435–1743. *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Regulation in Bacteriophage.

Date: December 9, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David J. Remondini, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892. 301–435–1038. *remondid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 21, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23587 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Institutes of Health Peer Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institutes of Health Peer Review Advisory Committee.

Date: January 23, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: Provide technical and scientific advice to the Director, National Institutes of Health (NIH), the Deputy Director for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Martin, PhD., Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892. 301/594–7945. *martinm@csr.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 21, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23588 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1603–DR]

Louisiana; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1603–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: November 19, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 19, 2005, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Acting Director, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Katrina, from August 29–November 1, 2005, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206.

Therefore, I amend my declarations of August 29, 2005, September 1, 2005, and October 22, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, at 100 percent of total eligible costs, through and including January 15, 2006. Effective January 16, 2006, the Federal funding for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, will be authorized at 90 percent of total eligible costs.

Please notify Governor Blanco and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–6815 Filed 12–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 14 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: November 19, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 19, 2005, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Acting Director, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Rita, from September 23-November 1, 2005, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206.

Therefore, I amend my declarations of September 24, 2005, and October 26, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, through and including January 15, 2006. Effective January 16, 2006, the Federal funding for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, will be authorized at 90 percent of total eligible costs.

Please notify Governor Blanco and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–6816 Filed 12–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 15 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

DATES: November 16, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, Department of Homeland Security, under Executive Order 12148, as amended, Alexander S. Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Vice Admiral Thad Allen of the United States Coast Guard as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–6817 Filed 12–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: November 19, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 19, 2005, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Acting Director, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from Hurricane Katrina, from August 29–October 14, 2005, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206.

Therefore, I amend my declarations of August 29, 2005, September 1, 2005, and October 22, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, through and including January 15, 2006. Effective January 16, 2006, the Federal funding for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, will be authorized at 90 percent of total eligible costs.

Please notify Governor Barbour and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–6821 Filed 12–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1616–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1616–DR), dated November 21, 2005, and related determinations.

DATES: *Effective Date:* November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from a severe winter storm and record and near-record snow from October 4–6, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide all categories of Public Assistance in the designated areas, emergency assistance (Public Assistance Category B, emergency protective measures for a period of 48 hours in those areas designated for snow removal assistance), Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

The counties of Benson, Billings, Bottineau, Bowman, Burke, Dunn, Golden Valley, McHenry, McKenzie, McLean, Mercer, Oliver, Pierce, Renville, Rolette, Sheridan, Stark, Towner, and Ward and the Fort Berthold Indian Reservation for Public Assistance.

The counties of Billings, Bowman, Burke, Dunn, Golden Valley, McKenzie, Morton, Mountrail, Stark, Ward, and Williams for snow removal and emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

All counties and tribal reservations within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–6823 Filed 12–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application for Immediate Family Member of U–1 Recipient; and U Nonimmigrant Status Certification; Forms I–918; I–918 Supplement A; and I–918 Supplement B.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 3, 2006.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Application for Immediate Family Member of U–1 Recipient; and U Nonimmigrant Status Certification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–918; I–918 Supplement A; and I–918 Supplement B; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households, Federal Government. This application permits victims of certain qualifying criminal activity and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–918—12,000 responses at 3 hours per response; Supplement A—24,000 responses at 1 hour per response; Supplement B—36,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 96,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: November 30, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–23598 Filed 12–2–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Extension of Existing Information Collection Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Application for Posthumous Citizenship; Form N–644.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 3, 2005.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to (202) 272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0059 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–644, USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: November 30, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, USCIS.

[FR Doc. 05–23608 Filed 12–2–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100); Form I–881.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 3, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs.@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0072 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of existing information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–881 U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. This form is used by a

nonimmigrant to apply for suspension of deportation or Special Rule cancellation of removal. The information collected on this form is necessary in order for the USCIS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for this release, pursuant to section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA); Public Law 105–100.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 660,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: November 30, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–23609 Filed 12–2–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4977–N–10]

Notice of Proposed Information Collection for Public Comment: The Study of Multifamily Building Conformance With the Fair Housing Accessibility Guidelines: Improving the Methodology (Phase 2)

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 3, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Jennifer Stoloff, Program Evaluation Division, Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8140, Washington, DC 20410–5000. Telephone (202) 708–3700, extension 5723 for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Multifamily Building Conformance with the Fair Housing Accessibility Guidelines: Improving the Methodology.

Description of the need for the information and proposed use: This request is for the clearance of a survey instrument designed to measure the degree of conformance in multifamily buildings to the Fair Housing Accessibility Guidelines. The survey will be compared to baseline data gathered in a previous study from 2003, which covered the period 1991–1996. The purpose of the survey is to: (1) Replicate the core components of the previous survey and compare, where possible, changes in the level of conformance with the Fair Housing Guidelines; (2) Provide a new and more reliable baseline for future studies; and (3) Conduct a large enough survey, with weighted sampling, to assess the differences in levels of conformance among specific housing types (*e.g.,* Low Income Housing Tax Credit properties and elderly properties).

OMB Approval Number: Pending.

Agency form numbers: None.

Members of Affected Public: Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Inspections: 400 projects, average of five hours inspection time per project will result in 2,000 hours. (This estimate combines inspection time with interview time. The actual burden on individuals will be closer to 400 hours.)

Telephone interviews: 100 respondents, one interview at one hour each will result in 100 hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 21, 2005.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 05–23572 Filed 12–2–05; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Supplement to the Draft Comprehensive Conservation Plan and Environmental Impact Statement for the Upper Mississippi River National Wildlife and Fish Refuge, Illinois, Iowa, Minnesota, and Wisconsin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Supplement to the Draft Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) is available for Upper Mississippi River National Wildlife and Fish Refuge. The Supplement to the Draft CCP/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals

and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

DATES: Written comments on the Supplement to the Draft CCP/EIS will be accepted up to 60 days after publication of this notice in the **Federal Register**.

ADDRESSES: Copies of the Supplement are available on compact disk or hard copy. You may access and download a copy via the planning Web site *http://fws.gov/midwest/planning/uppermiss/index.html* or you may obtain a copy by writing to the following address: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111.

All comments should be addressed to Upper Mississippi National Wildlife and Fish Refuge, Attention: CCP Supplement Comment, 51 East 4th Street, Room 101, Winona, Minnesota 55987, or direct e-mail to *r3planning@fws.gov.* Comments may also be submitted through the Service's regional Web site at: *http://www.fws.gov/midwest/planning/uppermiss/index.html.*

FOR FURTHER INFORMATION CONTACT: Don Hultman, at (507) 452–4232.

SUPPLEMENTARY INFORMATION: The Upper Mississippi River National Wildlife and Fish Refuge encompasses 240,000 acres along 261 miles of Mississippi River floodplain in Minnesota, Wisconsin, Iowa, and Illinois. The Refuge was established by Congress in 1924 to provide a refuge and breeding ground for migratory birds, fish, other wildlife, and plants. The Refuge is perhaps the most important corridor of habitat in the central United States due to its species diversity and abundance, and is the most visited refuge in the United States with 3.7 million annual visitors.

The Draft CCP/EIS was released for public review May 1, 2005, for a 120-day comment period ending August 31, 2005. The Refuge hosted 21 public meetings and workshops attended by 2,900 people. The workshops resulted in 87 workgroup reports with comments or recommendations on major issues. We also received 2,438 written comments including comments from the four states involved, the Corps of Engineers, and 41 conservation or recreation-related organizations, and 6 petitions with more than 3,000 signatures.

In response to the high degree of public interest and comment, in July 2005 we announced through the media the intent to issue a new preferred alternative following the comment period to reflect the input received. This Supplement is the new preferred alternative and is called Alternative E—Modified Wildlife and Integrated Public Use Focus. This new preferred alternative, along with the previous four alternatives, will be included in the Final CCP/EIS.

The Supplement contains both substantive and editorial changes to Alternative D, the initial preferred alternative. Substantive changes were made to several objectives which addressed several issues or topics, including: no hunting zones around some hiking/observation trails, changes to the boundaries and regulations for the Waterfowl Hunting Closed Areas, a 25 daily shotshell limit and 100 yard spacing requirement for waterfowl hunting, a managed hunt to address a waterfowl hunting firing line, changes to camping and other beach-related recreational use, proposed Electric Motor Areas, and boat ramp launch fees.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*) requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: October 24, 2005.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. E5–6814 Filed 12–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Shawangunk Grasslands National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service, we, our) announces that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Shawangunk Grasslands National Wildlife Refuge (NWR) is available for review. The Service prepared this CCP/EA in compliance with the National Environmental Policy Act of 1969, and the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd, *et seq.*).

DATES: The draft CCP/EA will be available for public review and comment for a 45-day period starting with the publication of this notice.

ADDRESSES: Copies of the draft CCP/EA on compact diskette or in print may be obtained by writing to Nancy McGarigal, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or e-mail *northeastplaning@fws.gov.* The document may also be viewed on the Web site at *http://library.fws.gov/ccps.htm.* We plan to host one evening public meeting in the Town of Shawangunk. We will announce the details at least 2 weeks in advance in local papers and post them at the refuge.

FOR FURTHER INFORMATION CONTACT: Nancy McGarigal, Refuge Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, 413–253–8562 (telephone), 413–253–8562 (FAX), or e-mail Nancy at *Nancy_McGarigal@fws.gov.*

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a CCP for each refuge. The purpose of developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, in conformance with the sound principles of fish and wildlife science, natural resources conservation, legal mandates, and Service policies. In

addition to outlining broad management direction on conserving wildlife and habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The Service will review and update each CCP at least every 15 years in accordance with the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969.

The transfer of 566 acres from the United States Military Academy at West Point (through the General Services Administration) to the Service created the Shawangunk Grasslands NWR in 1999. No land has been added since then. The refuge was established for its ''particular value in carrying out the national migratory bird management program'' (16 U.S.C. 667b), under the general legislative authority of the Transfer of Certain Real Property for Wildlife Conservation Purposes Act (16 U.S.C. 667b) and the Federal Property and Administrative Services Act (40 U.S.C. 471 *et seq.;* repealed by Public Law 107–217, August 21, 2002). Our Regional Director's memorandum to the General Services Administration, dated October 17, 1997, specifies the refuge's Regional importance for wintering raptors and breeding and migrating grasslands birds.

The 566-acre refuge lies in the Town of Shawangunk, Ulster County, New York, in the Hudson River/New York Bight watershed. We maintain 400 of those acres as open fields and grasslands, primarily by mowing, to benefit breeding, migratory and wintering grasslands-dependent birds. Asphalt or concrete runways and taxiways cover 30 acres of the refuge, formerly a military training airport. We do not actively manage the remaining 136 acres, which are classified as upland hardwood woodland with some shrub and transitioning to woodland.

We know of no federally listed species on the refuge. However, several rare or uncommon plants, and at least 141 species of birds, including 58 breeding species, have been documented. At least 20 of those are listed by the State of New York or are species of conservation concern for the Region. We conduct annual breeding bird surveys to document their presence and breeding status.

Bird watching is the most popular activity at this unstaffed refuge, which is administered by from the Wallkill River NWR headquarters in Sussex, New Jersey. The Shawangunk Grasslands NWR is open from sunrise to sunset, 7 days a week. Wildlife observation, nature photography, and environmental education and interpretation are all permitted.

The draft CCP/EA analyzes three alternatives for managing the refuge over the next 15 years. Alternative A (the ''No Action'' Alternative) would continue our present management, and would not change the habitat management and visitor programs described above.

Alternative B (the Service-preferred alternative) would expand our current grasslands management program with more intensive, diverse tools and techniques, which would potentially include grazing, haying, prescribed burning, and applying herbicides to promote native grassland and discourage invasive plants, and would also restore the natural hydrology of the area, to the extent that it does not impede our grasslands management. We would remove the runways and taxiways from 30 acres and restore them to native grassland, except where we can incorporate them into a planned interpretive trail. Alternative B would also open a small, man-made pond to fishing, and open the refuge to a fall archery deer hunt.

Alternative C would allow all 400 acres of managed grasslands and open fields to revert to shrub land, and eventually to woodland, to benefit shrub- and forest-dependent birds of conservation concern for the Region. Re-establishing the natural hydrology of the area would become a higher priority, which would eliminate the opportunity for fishing in the pond. As in alternative B, we would also restore the 30 acres of runways and taxiways, create an interpretive trail, and open the refuge to a fall archery deer hunt.

The draft also identifies a 5,960-acre Shawangunk Grasslands Focus Area that includes the refuge and contiguous, ecologically important land. None of the alternatives proposes Service acquisition of additional land at this time. We will encourage conservation owners to protect grasslands in that area.

All of the alternatives would continue to promote our existing conservation partnerships, new partnerships, and valuable volunteer opportunities. They would also enhance our outreach in the locale, including information exchanges with private landowners in the focus area who are interested in managing grassland for wildlife.

Dated: September 21, 2005.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 05–23642 Filed 12–2–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Lac Vieux Desert Band of Lake Superior Chippewa Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Lac Vieux Desert Band of Lake Superior Chippewa Indians' Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Lac Vieux Desert Band of Lake Superior Chippewa Indians' Reservation. The Reservation is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the exterior boundaries of the Lac Vieux Desert Band of Lake Superior Chippewa Indians' Reservation. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: Effective Date: This Ordinance is effective on December 5, 2005.

FOR FURTHER INFORMATION CONTACT: De Springer, Regional Tribal Operations Officer, Bureau of Indian Affairs, Midwest Regional Office, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, MN 55111, Telephone (612) 713–4400, Ext. 1125, Fax (612) 713–4401; or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., Mail Stop 320–SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Lac Vieux Desert Band of Lake Superior Chippewa Indians' Tribal Council adopted its Liquor Ordinance

by Resolution No. 2004–005 on September 28, 2004. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Lac Vieux Desert Band of Lake Superior Chippewa Indians' Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Lac Vieux Desert Band of Lake Superior Chippewa Indians was duly adopted by the Tribal Council on September 28, 2004.

Dated: November 23, 2005.

William A. Sinclair,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Lac Vieux Desert Band of Lake Superior Chippewa Indians' Liquor Ordinance reads as follows:

RESOLUTION #2004–005; Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians; Liquor Control Ordinance of the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians

Whereas: the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians are a federally recognized tribe, and

Whereas: the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians has a tribal council empowered to transact business and otherwise act on behalf of the band, and

Whereas: the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians is committed to regulating the use of liquor on its reservation and otherwise protecting the health, safety and welfare of the Tribe and its members as well as the general public, and;

Now therefore be it resolved: That the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians hereby adopts this resolution creating a Liquor Control Ordinance as follows:

Section I: Title

This Ordinance shall be known as the ''Liquor Control Ordinance.'' This Ordinance repeals and replaces any other previous liquor ordinances adopted by the council.

Section II: Authority

This Ordinance is enacted pursuant to Article IV Section 1 of the Constitution and Bylaws of the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians.

Section III: Purpose

This Ordinance regulates the consumption, delivery and/or sale of alcoholic beverages within the Indian country lands of the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians, for the purpose of protecting the health, safety and welfare of the Tribe and its members as well as the general public.

Section IV: Interpretation

This Ordinance shall be deemed an exercise of the police and regulatory powers of the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians to promote tribal self-determination and to protect the public welfare, and all provisions of this ordinance shall be liberally construed for the accomplishment of these purposes.

Section V: Definitions

The following definitions apply in this Ordinance, unless the context otherwise requires:

A. Alcoholic beverage means any spirituous, vinous, malt or fermented liquor, liquors and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent (½ of 1%) or more alcohol by volume, which are fit for use for beverage purposes.

B. Liquor means any alcoholic drink.

C. Person means a natural person, firm, association, corporation or other legal entity.

D. Tribe or Bands means the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians.

E. Tribal Council means the governing body of the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians, which body is also referred to as the Tribal Council in the Tribe's Constitution.

F. Secretary means the Secretary of the United States Department of the Interior.

G. Indian Country of the Tribe means, for purposes of this Ordinance, all lands within Gogebic County, Michigan which are now or hereafter owned by the Bands or held in trust for the Bands by the United States.

H. State means the State of Michigan.

I. Tribal representatives mean the Tribal Chairman, a tribal member, a program director or manager of a subsidiary or commercial enterprise of the Tribe.

J. Tribal license means an official action by the Tribal Council which authorizes the sale of alcoholic beverages for consumption either on the premises and/or away from the premises.

K. Premises means specified locations within the Indian Country of the Tribe, as described in a license issued by the Tribal Council.

Section VI: General Provisions

A. Policy

It is the policy of the Tribe that only the Tribe and its subsidiary enterprises, or tribal members or non-tribal members may engage in the sale of alcoholic beverages within the Indian Country of the Tribe. Therefore, no person other than the tribal government or its subsidiary enterprises or tribal members or non-tribal members as licensed under this ordinance may deliver for profit, sell or trade for profit any alcoholic beverages within the Indian Country of the Tribe.

B. On-Premises Consumption

No person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage, nor any other substance whatsoever capable of producing alcoholic intoxication, intended for consumption on the premises, nor aid nor abet any Indian or non-Indian person in any of the foregoing, except in compliance with the terms and conditions of this Ordinance as well as applicable federal Indian liquor laws, and applicable provisions of the laws of the State of Michigan and regulations administered by its Liquor Control Commission.

C. Off-Premises Consumption

No person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage, nor any other substance whatsoever capable of producing alcoholic intoxication, intended for consumption away from the premises, nor aid nor abet any Indian or non-Indian person in any of the foregoing, except in compliance with the terms of this ordinance, applicable federal Indian liquor laws, and applicable provisions of the laws of the State of Michigan and regulations administered by its Liquor Control Commission.

D. Application of State Law

Unless otherwise contradicted by this Ordinance or other Tribal law, laws of the State and regulations of its Liquor Control Commission shall pertain to sale, trade, manufacture, use or possession of alcoholic beverages within the Indian Country of the Tribe. Provided that in no event shall any laws of the Tribe pertaining to liquor regulation be construed to be less stringent than the laws and regulations of the State. Nothing in this section or Ordinance is intended to allow the State to exercise any jurisdiction over the Tribe, its members, or any persons or transactions within the Indian Country of the Tribe that the State would not otherwise have. Nothing in this section or ordinance is intended to in any way waive or limit the sovereign immunity of the Tribe.

E. Condition of Tribal License

Any tribal enterprise having a license for the sale of alcoholic beverages issued by the Tribal Council shall be required to comply, as a condition of retaining such license, with any applicable tribal laws and ordinances and shall further observe the laws of the State regarding times of sale and minimum ages of persons to whom sales may be made.

Section VII: Tribal Licenses for the Sale of Alcoholic Beverages

A. Upon application submitted in writing by tribal representatives, the Tribal Council may issue a license authorizing (1) sale of alcoholic beverages (or specific types thereof) solely for consumption on the premises, and/or (2) sale of alcoholic beverages (or specific types thereof) intended for consumption away from the premises.

B. All applications for such licenses must be submitted to the Tribal Council in writing, setting forth the purpose for the license together with the description of the premises upon which such sale is proposed to take place.

C. The Tribal Council shall have the power and authority to determine, in its sole discretion, the number and type of licenses for the sale of alcoholic beverages that may from time-to-time be issued pursuant to this ordinance and to place any restrictions on said license it deems appropriate under the circumstances.

D. Fees. The Tribal Council may set reasonable fees for the issuance of licenses under this Ordinance.

E. Duration of License. Unless sooner canceled, every license issued by the Tribal Council shall expire at midnight on the 31st day of December. Applications for renewal must be submitted to the Tribal Council on or before November 15 of the preceding year. The Tribal Council will act on all renewal applications on or before December 15.

Section VIII: Violations

A. Any Indian person found to be in violation of the provisions of this Ordinance shall be deemed guilty of a criminal offense and may be prosecuted in Tribal Court in an action brought by the Tribal Prosecutor. Any such criminal proceeding against an Indian person shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses. Upon conviction, the Tribal Court may impose a sentence of a fine not greater than $1,000.00 and/or a jail term not exceeding sixty (60) days.

B. Nothing in this ordinance shall be construed to require or authorize the criminal trial and punishment by the Tribal Court of any non-Indian except to the extent allowed under Federal law. In general, when any provision of this Ordinance is violated by a non-Indian, he or she shall be referred to state and/or Federal authorities for prosecution under applicable law. However, violations of this Statute by a non-Indian shall also be deemed a civil offense against the Tribe and a civil action against non-Indian violators may proceed in Tribal Court to the extent allowed under Federal law. In such civil action brought in Tribal Court by the Tribal Prosecutor, the Tribal Court may impose a fine not greater than $1,000.00 and/or exclusion from the Tribe's reservation, as authorized in Article IV, Section 1(k) of the Tribe's Constitution. Any such civil proceeding against a non-Indian shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses.

C. Revocation of License. The Tribal Council may, for alleged violation of this Ordinance, temporarily suspend a license for an alleged violation of this Ordinance until such time as an action is commenced in Tribal Court. The Chairperson of the Tribal Council or the Tribal Prosecutor may, for alleged violation of this Ordinance, institute and maintain an action in the Tribal Court in the name of the Tribe to revoke or permanently suspend a license issued under this Ordinance. Such proceeding against the holder of the license in question shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses. Upon final judgment issued against the defendant, the Tribal Court may order the forfeiture of any license issued pursuant to this Ordinance, and all rights of the licensee to keep or sell alcoholic beverages under this Ordinance shall be suspended or terminated as the case may be. Pending final judgment the Tribal Court may issue orders for preliminary injunction if the plaintiff can demonstrate a likelihood of success and irreparable injury to the Tribe or its members if such orders are not issued.

Section IX: Effective Date

This ordinance shall be effective as a matter of tribal law as of the date of the adoption by the Tribal Council and effective as a matter of Federal law on such date as the Assistant Secretary—Indian Affairs certifies and publishes the same in the **Federal Register**.

Section X: Savings Clause

In the event that any phrase, provision, part, paragraph, subsection or section of this Ordinance is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Lac Vieux Desert Desert Band of Lake Superior Chippewa Indians or applicable Federal law, such phrase, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Ordinance, the entirety of the balance of the Ordinance to remain in full and binding force and effect.

Certification

We do hereby certify that this resolution was duly presented and voted upon with a vote of 5 in favor, 1 opposed, and 0 abstaining, at a regular meeting held on this 28th day of September 2004.

/s/
James Williams, Jr., Chairman
/s/
Michelle Hazen, Secretary

[FR Doc. E5–6818 Filed 12–2–05; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A; OMB Control Number 1004–0162]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 6, 2004, the BLM published a notice in the **Federal Register** (69 FR 40646) requesting comments on this proposed collection. The comment period ended on September 7, 2004. The BLM received no comments. You may obtain copies of the proposed collection of information by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0162), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop,gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions uses;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Oil and Gas Geophysical Exploration Operations (43 CFR 3150).

OMB Control Number: 1004–0162.

Bureau Form Number: BLM 3150–4/FS 2800–16; BLM 3150–5/FS 2800–16a; certain nonform information (Alaska only).

Abstract: The Bureau of Land Management and the FS use the information to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, land use plans, and environmental assessments in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.

Frequency: On occasion.

Description of Respondents: Oil and gas exploration and drilling companies.

Estimated Completion Time: BLM 3150–4/FS 2800–16, 1 hour; BLM Form 3150–5/FS 2800–16a, 20 minutes; and certain nonform information (Alaska only) 1 hour.

Annual Responses: 1,253.

Application Fee per Response: $25 filing/renewal fee (only if off-lease in Alaska).

Annual Burden Hours: 836.

Bureau Clearance Officer: Ian Senio, (202) 452–5033.

Dated: July 21, 2005.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

Editorial Note: This document was received in the Office of the Federal Register on November 29, 2005.

[FR Doc. 05–23581 Filed 12–2–05; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–253 and 731–TA–132,252, 271, 273, 409, 410, 532–534, and 536 (Second Review)]

Certain Pipe and Tube From Argentina, Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on welded carbon steel pipe and tube from Turkey and the antidumping duty orders on certain pipe and tube from Argentina, Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on welded carbon steel pipe and tube from Turkey and the antidumping duty orders on certain pipe and tube from Argentina, Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 29, 2005.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 60367, October 17, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on April 19, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 9, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 2, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 4, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 28, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 18, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 18, 2006. On June 14, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 16, 2006, but such final

comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 29, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–6793 Filed 12–2–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; ASTM international—Standards

Notice is hereby given that, on November 16, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International—Standards (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between July 2005 and November 2005, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on August 4, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 26, 2005 (70 FR 50406).

For additional information, please contact: Thomas B. O'Brien, Jr., General Counsel, at ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, telephone 610–832–9597, e-mail address *tobrien@astm.org.*

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–23611 Filed 12–2–05; 8:45 am]

BILLING CODE 4140–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Institute of Electrical and Electronics Engineers

Notice is hereby given that, on November 15, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 10 new standards have been initiated and 2 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/11–10–5.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on October 4, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2005 (70 FR 66851).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–23610 Filed 12–2–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 29, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

AGENCY: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Occupational Safety and Health State Plan Information.

OMB Number: 1218–0247.

Frequency: On occasion; Quarterly; and Annually.

Type of Response: Reporting.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 27.

Number of Annual Responses: 1,240.

Estimated Time Per Response: Varies from one hour to respond to an information survey to 80 hours to document State annual performance goals.

Total Burden Hours: 10,522.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 18 of the Occupational Safety and Health Act of 1970 (the Act) encourages the States to assume responsibility for the development and enforcement of State occupational safety and health standards through the vehicle of an approved State plan. Absent a plan approved by the Occupational Safety and Health Administration (OSHA), States are preempted from asserting jurisdiction over any occupational safety and health issue with respect to which a Federal standard has been promulgated. Section 18 establishes the basic criteria for State plan approval; provides for the exercise of concurrent Federal enforcement jurisdiction after initial plan approval until such time as the State has demonstrated that it is meeting the approval criteria in actual operation (final State Plan approval), at which point Federal enforcement jurisdiction may be relinquished; provides that State standards and enforcement must be, and continue to be, ''at least as effective'' as the Federal program including any changes thereto; and requires OSHA to make a continuing evaluation of the manner in which the State is implementing its program and to take action to withdraw plan approval should there be a failure to substantially comply with any provision of the State plan.

OSHA promulgated a series of regulations between 1970 and 1977 implementing the provisions of section 18 of the Act. 29 CFR 1953 was revised in 2002.

• 29 CFR part 1902, State Plans for the Development and Enforcement of State Standards.

• 29 CFR part 1952, Approved State Plans for Enforcement of State Standards.

• 29 CFR part 1953, Changes to State Plans.

• 29 CFR part 1954, Procedures for the Evaluation and Monitoring of Approved State Plans.

• 29 CFR part 1955, Procedures for Withdrawal of Approval of State Plans.

• 29 CFR part 1956, State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States without Approved Private Employee Plans.

The requirements for State submissions on the structure and performance of their OSHA-approved State Plan, as established by the various State Plan regulations, are necessary to provide OSHA with sufficient information to assure that the State plan provides a program of standards and enforcement and voluntary compliance to employers and employees in that State that is ''at least as effective'' as the Federal OSHA program and thus warrants continued Federal approval and funding.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E5–6824 Filed 12–2–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based on the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. As designee of the Secretary, we have granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where we published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. For further information contact Barbara Barron at 202–693–9447.

Dated at Arlington, Virginia, this 27th day of November, 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2005–044–C.

FR Notice: 70 FR 39800.

Petitioner: Andalex Resources, Inc.

Regulation Affected: 30 CFR 75.1100–2(e)(2)

Summary of Findings: The petitioner's proposal is to use two multi-purpose dry chemical portable fire extinguishers with at least a minimum capacity of 10 pounds of dry power at each temporary and permanent electrical installation. This is considered an acceptable alternative method for the Aberdeen Mine (MSHA I.D. No. 42–02028). The petition for modification is granted for temporary electrical installations, provided that petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher required in 30 CFR 75.1100–1(e)at each of the temporary electrical installations at the Aberdeen Mine with conditions.

Docket No.: M–2004–046–C.
FR Notice: 70 FR 42102.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: The petitioner's proposal is to use two portable fire extinguishers, or one extinguisher at each temporary electrical installation with at least twice the minimum capacity for a portable fire extinguisher required in 30 CFR 75.1100–1(e). This is considered an acceptable alternative method for the Crandall Canyon Mine MSHA I.D. No. 42–01715). The petition for modification is granted for temporary electrical installations, provided that petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) or one portable fire extinguisher with twice the minimum capacity specified in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the Crandall Canyon Mine with conditions.

Docket No.: M–2005–047–C.
FR Notice: 70 FR 42102.
Petitioner: West Ridge Resources, Inc.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: The petitioner's proposal is to use two portable fire extinguishers, or one extinguisher at each temporary electrical installation with at least twice the minimum capacity for a portable fire extinguisher required in 30 CFR 75.1100–1(e). This is considered an acceptable alternative method for the West Ridge Mine (MSHA I.D. No. 42–02233). The petition for modification is granted for temporary electrical installations, provided that petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) or one portable fire extinguisher with twice the minimum capacity specified in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the West Ridge Mine with conditions.

Docket No.: M–2005–048–C.
FR Notice: 70 FR 42102.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: The petitioner's proposal is to use two portable fire extinguishers, or one extinguisher at each temporary electrical installation with at least twice the minimum capacity for a portable fire extinguisher required in 30 CFR 75.1100–1(e). This is considered an acceptable alternative method for the South Crandall Canyon Mine (MSHA I.D. No. 42–02356). The petition for modification is granted for temporary electrical installations, provided that petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) or one portable fire extinguisher with twice the minimum capacity specified in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the South Crandall Canyon Mine with conditions.

Docket No.: M–2005–049–C.
FR Notice: 70 FR 42102.
Petitioner: Andalex Resources, Inc.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: The petitioner's proposal is to use two portable fire extinguishers, or one extinguisher at each temporary electrical installation with at least twice the minimum capacity for a portable fire extinguisher required in 30 CFR 75.1100–1(e). This is considered an acceptable alternative method for the Pinnacle Mine (MSHA I.D. No. 42–01474). The petition for modification is granted for temporary electrical installations, provided that petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) or one portable fire extinguisher with twice the minimum capacity specified in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the Pinnacle Mine with conditions.

[FR Doc. E5–6832 Filed 12–2–05; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of MET Laboratories, Inc., (MET) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The expansion of recognition becomes effective on December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of MET Laboratories, Inc., (MET) as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion covers the use of additional test standards. OSHA's current scope of recognition for MET may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/met.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' [1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's ''registered'' certification mark (i.e., the mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

MET submitted an application, dated November 1, 2004, (see Exhibit 35–1) to expand its recognition to include 12 additional test standards. The NRTL Program staff determined that each of these standards is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). However, one standard was already included in MET's scope. Therefore, OSHA is approving eleven test standards for the expansion. In connection with this request, OSHA did not perform an on-site review of MET's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that MET's recognition be expanded to include the eleven additional test standards listed below (see Exhibit 35–2). The preliminary notice announcing the expansion application was published in the **Federal Register** on August 30, 2005 (70 FR 51370). Comments were requested by September 14, but no comments were received in response to this notice.

The previous notices published by OSHA for MET's recognition covered an expansion of recognition, which became effective on August 26, 2003 (68 FR 51304).

You may obtain or review copies of all public documents pertaining to the MET application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC, 20210. Docket No. NRTL1–88 contains all materials in the record concerning MET's recognition.

The current address of the MET facility already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Final Decision and Order

NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that MET has met the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of MET, subject to the following limitation and conditions.

Limitation

OSHA limits the expansion of MET's recognition to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that the standards meet the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 5A Nonmetallic Surface Raceways and Fittings.
UL 291 Automated Teller Systems.
UL 294 Access Control System Units.
UL 508A Industrial Control Panels.
UL 963 Sealing, Wrapping, and Marking Equipment.
UL 1727 Commercial Electric Personal Grooming Appliances.
UL 1863 Communication Circuit Accessories.
UL 60065 Audio, Video and Similar Electronic Apparatus.**
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements.
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor Compressors.
UL 61010C–1 Process Control Equipment.

****Note:** This standard is comparable to UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use. Since no NRTL is currently recognized for UL 60065, we plan to modify the scope of any NRTL currently recognized for UL 6500 to add UL 60065.

The designation and title of the above test standards were current at the time of the preparation of the notice of the preliminary finding.

OSHA's recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Conditions

MET must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to MET's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

MET will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

MET will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 28th day of November, 2005.

Jonathan L. Snare,

Acting Assistant Secretary.

[FR Doc. E5–6822 Filed 12–2–05; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2005–5 CRB DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Board of the Library of Congress is announcing the commencement of a proceeding to determine the reasonable rates and

terms for the transmission and ephemeral recording statutory licenses that would apply to a new type of service. This new type of subscription service performs sound recordings on digital audio channels programmed by the licensee for transmission by a satellite television distribution service to its residential customers, where the audio channels are bundled with television channels as part of a ''basic'' package of service and not for a separate fee. The Board is also announcing the date by which a party who wishes to participate in the new rate proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than January 4, 2006.

ADDRESSES: If hand delivered by a private party, an original and five copies of a Petition to Participate along with the $150 filing fee should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial carrier, an original and five copies of a Petition to Participate along with the $150 filing fee must be delivered to the Congressional Courier Acceptance Site located at Second and D Street, NE., Monday through Friday between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Royalty Board, Library of Congress, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a Petition to Participate along with the $150 filing fee should be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Petitions to Participate and the $150 filing fee may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2005, the Copyright Royalty Board (''Board'') from XM Satellite Radio, Inc. (''XM''), a Petition to Initiate and Schedule Proceeding for a New Type of Subscription Service pursuant to 17 U.S.C. 114(f)(2)(C). As characterized in the Petition, ''This new type of subscription service performs sound recordings on digital audio channels programmed by the licensee for transmission by a satellite television distribution service to its residential customers, where the audio channels are bundled with television channels as part of a 'basic' package of service and not for a separate fee.'' XM Petition at 1.

As explained in the Petition, commencing on or about November 15, 2005, DirecTV, Inc., (''DirecTV''), a provider of television service to residential consumers by satellite, would begin to include a number of music and non-music audio channels, supplied by XM in its program lineup. The XM channels will be ''a part of the DirecTV basic package of service, without requiring payment of a separate subscription fee.'' XM Petition at 2. This new service would utilize the statutory copyright licenses provided in 17 U.S.C. 114(d)(2) (for performance by means of subscription digital audio transmission) and 17 U.S.C. 112(e) (for ephemeral recordings solely for use in those transmissions). This Notice is issued, pursuant to 17 U.S.C. 804(b)(3)(C)(ii), to initiate the proceeding to determine the rates and terms for those licenses.

Petitions To Participate

Any party who wishes to participate in this proceeding must submit to the Board a Petition to Participate by no later than January 4, 2006. 17 U.S.C. 803(b)(1)(B). The single or joint Petition to Participate must provide all of the information required by 37 CFR 351.1(b). See, 70 FR 30906–7 (May 31, 2005). The Petition to Participate must be accompanied by a $150 filing fee. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to ''Copyright Royalty Board.'' If payment of the filing fee in the form of a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Dated: November 29, 2005.

Bruce G. Forrest,

Interim Chief Copyright Royalty Judge.

[FR Doc. 05–23639 Filed 12–2–05; 8:45 am]

BILLING CODE 1410–72–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–336 and 50–423]

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Units 2 and 3; Notice of Issuance of Renewed Facility; Operating License Nos. Dpr–65 And Npf–49; for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Renewed Facility Operating License Nos. DPR–65 and NPF–49 to Dominion Nuclear Connecticut, Inc. (licensee), the operator of Millstone Power Station (MPS), Units 2 and 3. Renewed Facility Operating License No. DPR–65 authorizes operation of MPS Unit 2 by the licensee at reactor core power levels not in excess of 2700 megawatts thermal, in accordance with the provisions of the MPS renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–49 authorizes operation of MPS Unit 3 by the licensee at reactor core power levels not in excess of 3411 megawatts thermal, in accordance with the provisions of the MPS renewed license and its Technical Specifications.

MPS Units 2 and 3 are pressurized water reactors located in Waterford, Connecticut. The licensee's applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter 1, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action of issuing the proposed renewed licenses and of an opportunity for a hearing on the proposed issuance of the renewed licenses was published in the **Federal Register** on March 12, 2004 (69 FR 11897).

For further details about this action, see: (1) Dominion Nuclear Connecticut's license renewal applications for MPS Units 2 and 3, dated January 20, 2004, as supplemented by letters dated through July 21, 2005; (2) the Commission's safety evaluation report dated October 2005 (NUREG–1838); and (3) the Commission's final environmental impact statements (NUREG–1437, Supplement 22, for the Millstone Power Station, Units 2 and 3, dated July 2005). These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, and can be viewed from the NRC Public

Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License Nos. DPR–65 and NPF–49 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Director, Division of License Renewal. Copies of the MPS Units 2 and 3, Safety Evaluation Report (NUREG–1838) and the Final Environmental Impact Statements (NUREG–1437, Supplement 22) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (*http://www.ntis.gov*), 703–605–6000, or Attention: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 28th day of November 2005.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E5–6833 Filed 12–2–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373; 50–374; License Nos. NPF–11; NPF–18; EA–04–170]

In the Matter of Exelon Generation Company, LLC, LaSalle County Station, 2601 North 21st Road, Marseilles, IL 61341–9757; Confirmatory Order Modifying License (Effective Immediately)

I

Exelon Generation Company, LLC (Exelon or licensee) is the holder of Facility Operating License Nos. NPF–11 and NPF–18 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on April 17, 1982, and February 16, 1983. The licenses authorize the operation of LaSalle County Station, Units 1 and 2 (LaSalle), in accordance with conditions specified therein. The facility is located on the licensee's site in LaSalle County, IL.

II

On January 25, 2004, three employees of The Venture (Venture), contractors to Exelon, and their foreman, also a Venture employee, entered a High Radiation Area (HRA) in the LaSalle Unit 1 Reactor Building raceway to conduct preparations for valve replacement. The contractors did not sign onto the required HRA radiation work permit (RWP) or receive the required briefing for work in the HRA. This resulted in an apparent violation of LaSalle Technical Specification (TS) 5.7.1, ''High Radiation Areas with Dose Rates Not Exceeding 1.0 rem/hour at 30 Centimeters from the Radiation Source or from any Surface Penetration by the Radiation,'' which requires that an appropriate RWP be utilized by radiation workers and that a pre-job brief be provided prior to entry into any HRA. The NRC's Office of Investigations determined that two of the three craft workers and the foreman willfully violated the station radiation procedures implementing the TSs.

In a letter dated November 19, 2004, transmitting the Summary of Investigation, the NRC provided Exelon an opportunity to address the apparent violation. In a letter dated December 17, 2004, Exelon responded to the apparent violation by acknowledging that a willful violation occurred, that the violation should be categorized at Severity Level IV, and that the violation met the NRC criteria to be categorized as a non-cited violation (NCV). In a letter dated May 2, 2005, the NRC categorized the violation at Severity Level III and issued Exelon a ''Notice of Violation and Proposed Imposition of Civil Penalty—$60,000,'' for LaSalle. On May 12, 2005, in response to the NRC's enforcement action, Exelon informed the NRC of its intent to appeal the Notice of Violation and Proposed Imposition of Civil Penalty and requested the use of the Alternative Dispute Resolution (ADR) process as a means to obtain resolution.

ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party, and the NRC currently has a pilot program for using ADR. The technique that the NRC decided to employ during the pilot program, which is now in effect, is mediation.

III

On July 11, 2005, the NRC and Exelon met at the Exelon headquarters in Warrenville, IL, at an ADR session mediated by a professional mediator and arranged through Cornell University's Institute on Conflict Resolution. As a result of this ADR session, all parties reached a settlement agreement, which was signed by both Exelon and NRC representatives on July 11, 2005. Subsequent to the ADR mediation session, the parties agreed to the addition of two time frames. The phrase, ''prior to the next two refueling outages'' replaced the word ''each'' in item 2.I, and a corrective actions completion date of no later than 6 months from the date of issuance of this Confirmatory Order, unless otherwise stated, was added to section IV of this Confirmatory Order. This resulted in the following stipulations:

1. The NRC issued a May 2, 2005, Notice of Violation and Proposed Imposition of a Civil Penalty (Severity Level III violation, $60,000 civil penalty) based upon three craft workers and their foreman willfully entering a posted HRA without signing the required radiation work permit or receiving a HRA briefing in violation of TSs 5.7.1.b and e.

2. After having had an opportunity to examine these issues during mediated ADR, Exelon and the NRC have concluded that they can resolve all issues on a mutually satisfactory basis. Accordingly, Exelon and the NRC have agreed to enter this settlement agreement to provide for full settlement of any enforcement matters between Exelon and the NRC related to or arising out of events which were the subject of the NRC's proposed enforcement action on May 2, 2005. Both Exelon and the NRC agree to the following:

a. A willful violation occurred as documented in the NRC's May 2, 2005, Notice of Violation; however, the NRC agreed to categorize this as a Severity Level IV violation and agreed not to consider it as part of the civil penalty assessment process (NRC Enforcement Policy, section VI.C.2) should the NRC consider future enforcement actions against LaSalle.

b. A Confirmatory Order is an appropriate enforcement sanction to confirm action in this case, and the NRC agrees to a reduced civil penalty of $10,000.

c. Exelon will document in LaSalle station procedures or training material, the following corrective actions:

i. Revise initial radiation worker training material to highlight HRA entry requirements and consequences for the radiation worker if requirements are not met;

ii. Revise RWP instructions that allow HRA entry to state ''high radiation entry brief required;''

iii. Add warnings to worker acknowledgments on the computer screen during the access control electronic dosimetry log-in process;

iv. Add the radiation protection aid for conducting HRA briefings; and

v. Require a signature from transient refueling outage workers prior to

issuance of dosimetry that acknowledges their understanding of HRA entry requirements and the consequences for violating them.

d. During the first 10 days, or longer as necessary, of the next two refueling outages, LaSalle will have greeters at primary access points to the radiologically controlled area to enhance awareness of radiological controls.

e. For the next two refueling outages, all transient refueling outage workers, except as specifically authorized by the Radiation Protection Manager, will be required to attend and pass a dynamic learning activity on proper HRA entry.

f. LaSalle will perform an industry benchmark evaluation of HRA controls, and evaluate changes to existing practices prior to the next refueling outage.

g. In addition to the corrective actions already documented in Exelon's December 17, 2004 response, Exelon will require that Venture revise its Operating Procedures, which are applicable fleet-wide, to further assure compliance with HRA entry requirements and to specifically include the following requirements:

i. That a discussion of pertinent radiological practices be conducted at each daily shift brief;

ii. That Venture employees who will work in radiation areas will read, understand, and sign a pledge to attest to his/her commitment to follow all radiological requirements. (Each pledge will be co-signed by the Venture site manager, project superintendent, or site as low as reasonably achievable (ALARA) coordinator and will be retained for a period of one year.);

iii. That Venture superintendents will be present at select pre-job briefs involving HRA entries; and

iv. That Venture will participate in Exelon Radiation Protection Manager peer group meetings at least semi-annually to evaluate and take action on radiation protection issues.

h. Exelon will conduct a review of the implementation and effectiveness of its and Venture's corrective actions covered in this Order. This review shall be conducted for at least the next two refueling outages at LaSalle. The results of each review will be made available for NRC review upon request. The review shall be conducted by knowledgeable individuals independent of the LaSalle facility.

i. The LaSalle Plant Manager or Site Vice President will meet with contract leadership prior to the next two refueling outages to establish personnel expectations in following radiological work requirements.

j. The scope of this agreement includes the events which were the subject of the NRC's proposed enforcement action on May 2, 2005.

By a letter from Exelon to the NRC dated August 25, 2005, Exelon documented these settlement agreement stipulations and acknowledged concurrence with the terms and conditions of the settlement agreement dated and signed by representatives of Exelon and the NRC on July 11, 2005.

In view of the Confirmatory Order, which was consented to by Exelon, as evidenced by your signed ''Consent and Hearing Waiver Form'' (copy attached) dated November 18, 2005, and based, in part, on the expectation that Exelon will satisfactorily implement the conditions of this Confirmatory Order; the NRC is reclassifying the violation from Severity Level III to Severity Level IV and will not consider it as part of the civil penalty assessment process (Enforcement Policy, section VI.C.2) should the NRC consider future enforcement actions at LaSalle. Additionally, the NRC will reduce the proposed $60,000 civil penalty to $10,000.

I find that the licensee's commitments as set forth in section IV are acceptable and necessary and conclude that, with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the licensee's commitments be confirmed by this Order. Based on the above and the licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 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 and 10 CFR part 50, *it is hereby ordered, effective immediately, that License Nos. NPF–11 and NPF–18 are modified as follows:*

By no later than 6 months from the date of issuance of this Confirmatory Order, unless otherwise stated, the licensee will complete the following:

1. Exelon will document in LaSalle station procedures or training material, the following corrective actions:

a. Revise initial radiation worker training material to highlight HRA entry requirements and consequences for the radiation worker if requirements are not met;

b. Revise RWP instructions that allow HRA entry to state ''high radiation entry brief required;''

c. Add warnings to worker acknowledgments on the computer screen during the access control electronic dosimetry log-in process;

d. Add the radiation protection aid for conducting HRA briefings; and

e. Require a signature from transient refueling outage workers prior to issuance of dosimetry that acknowledges their understanding of HRA entry requirements and the consequences for violating them.

2. During the first 10 days, or longer as necessary, of the next two refueling outages, LaSalle will have greeters at primary access points to the radiologically controlled area to enhance awareness of radiological controls.

3. For the next two refueling outages, all transient refueling outage workers, except as specifically authorized by the Radiation Protection Manager, will be required to attend and pass a dynamic learning activity on proper HRA entry.

4. LaSalle will perform an industry benchmark evaluation of HRA controls, and evaluate changes to existing practices prior to the next refueling outage.

5. In addition to the corrective actions already documented in Exelon's December 17, 2004 response, Exelon will require that Venture revise its Operating Procedures, which are applicable fleet-wide, to further assure compliance with HRA entry requirements and to specifically include the following requirements:

a. That a discussion of pertinent radiological practices be conducted at each daily shift brief;

b. That Venture employees who will work in radiation areas will read, understand, and sign a pledge to attest to his/her commitment to follow all radiological requirements. (Each pledge will be co-signed by the Venture site manager, project superintendent, or site as low as reasonably achievable (ALARA) coordinator and will be retained for a period of one year.);

c. That Venture superintendents will be present at select pre-job briefs involving HRA entries; and

d. That Venture will participate in Exelon Radiation Protection Manager peer group meetings at least semi-annually to evaluate and take action on radiation protection issues.

6. Exelon will conduct a review of the implementation and effectiveness of its and Venture's corrective actions covered in this Order. This review shall be conducted for at least the next two refueling outages at LaSalle. The results of each review will be made available for NRC review upon request. The review shall be conducted by knowledgeable individuals independent of the LaSalle facility.

7. The LaSalle Plant Manager or Site Vice President will meet with contract leadership prior to the next two refueling outages to establish personnel expectations in following radiological work requirements.

8. The licensee shall pay a civil penalty in the amount of $10,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532–4352, and to the licensee. Because of continuing disruptions in delivery of mail to U.S. 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 a person, other than the licensee, 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 Confirmatory Order should be sustained.

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 IV above shall be final 20 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 IV 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.

For the Nuclear Regulatory Commission.

Dated this 22nd day of November 2005.

Michael R. Johnson,

Director, Office of Enforcement.

Attachment—Consent and Hearing Waiver Form

Exelon Generation Company, LLC (EGC) hereby agrees to comply with the commitments described in the NRC's letter dated November 15, 2005, and agrees to incorporation of those commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, EGC consents to the issuance of the Confirmatory Order, effective immediately, with the commitments agreed to at an Alternative Dispute Resolution mediation session held in Warrenville, IL, on July 11, 2005; as documented in an August 25, 2005, letter from EGC to the NRC; and as incorporated in the draft Confirmatory Order. I also recognize that by signing below, pursuant to 10 CFR 2.202(a)(3) and (d), EGC waives the right to request a hearing on all or any part of the Order.

Dated: November 18, 2005.

T. S. O'Neill,

Vice President, Licensing and Regulatory Affairs.

[FR Doc. E5–6827 Filed 12–2–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09011]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the Department of the Army, Watervliet Arsenal's Facility in Watervliet, NY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to the Department of the Army, Watervliet Arsenal for Materials License No. STB–1554, to authorize release of Building 120 at its facility in Watervliet, New York, for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of Building 120 at the licensee's Watervliet, New York, facility for unrestricted use. The Department of the Army, Watervliet Arsenal was authorized by NRC from 1972 to use radioactive materials for research and development purposes at the site. On March 7, 2005, the Department of the Army, Watervliet Arsenal, requested that NRC release Building 120 at the facility for unrestricted use. The Department of the Army has conducted surveys of the facility and provided information to the NRC to demonstrate that Building 120 meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final

status survey submitted by the Department of the Army. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate. Additionally, no non-radiological or cumulative impacts were identified.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release Building 120 for unrestricted use. The NRC staff has evaluated the Department of the Army, Watervliet Arsenal's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment [ML053290136] and the Final Survey Report for Room 255, Building 120, Watervliet Arsenal, dated March 2005 [ADAMS Accession No. ML051080464]. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to the NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia-privacy.html.*

Dated at King of Prussia, Pennsylvania, this 25th day of November, 2005.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–6829 Filed 12–2–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request; Upon Written Request, Copy Available From: Securities and Exchange, Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Form N–54A; SEC File No. 270–182; OMB Control No. 3235–0237.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*] (the ''PRA''), 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 for extension and approval.

• Form N–54A under the Investment Company Act of 1940; Notification of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(a) of the Act.

Form N–54A [17 CFR 274.53] is a notification to the Commission of election to be regulated as a business development company. A company making such an election only has to file a Form N–54A once.

It is estimated that approximately 46 respondents per year file with the Commission a Form N–54A. Form N–54A requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the Form. The total burden hours for Form N–54A would be 23.0 hours per year in the aggregate. The estimated annual burden of 23.0 hours represents an increase of 21.0 hours over the prior estimate of 2.0 hours. The increase in burden hours is attributable to an increase in the number of respondents from 4 to 46.

The estimate of average burden hours for Form N–54A is made solely for the purposes of the PRA and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

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. E5–6819 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Announced].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, December 8, 2005, at 2 p.m.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Closed Meeting on December 8, 2005:

Adjudicatory Matter

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: December 1, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23687 Filed 12–1–05; 3:50 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52844; File No. SR–Amex–2005–064]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Telemarketing

November 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] (''Exchange Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 23, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] On November 15, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Amex Rule 429 (''Telemarketing'') to require Amex members and member organizations to participate in the National Do-Not-Call Registry maintained by the Federal Trade Commission (''FTC'') and to follow applicable regulations of the Federal Communications Commission (''FCC'').

The current text of Amex Rule 429 would be deleted. The text of the proposed rule change is set forth below. *Italics* indicate new text.

Telemarketing

Rule 429.

(a) General Telemarketing Requirements

No member or member organization, or person associated with a member or member organization shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to:

(1) Time of Day Restriction

Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless

(A) the member has an established business relationship with the person pursuant to paragraph (g)(1)(A),

(B) the member has received that person's prior express invitation or permission, or

(C) the person called is a broker or dealer;

(2) Firm Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member; or

(3) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) National Do-Not-Call List Exceptions

A member making telephone solicitations will not be liable for violating paragraph (a)(3) if:

(1) Established Business Relationship Exception

The member has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with that member;

(2) Prior Express Written Consent Exception

The member has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and the member which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed; or

(3) Personal Relationship Exception

The associated person making the call has a personal relationship with the recipient of the call.

(c) Safe Harbor Provision

A member or person associated with a member making telephone solicitations will not be liable for violating paragraph (a)(3) if the member or person associated with the member demonstrates that the violation is the result of an error and that as part of the member's routine business practice, it meets the following standards:

(1) Written procedures. The member has established and implemented written procedures to comply with the national do-not-call rules;

(2) Training of personnel. The member has trained its personnel and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) Recording. The member has maintained and recorded a list of telephone numbers that it may not contact; and

(4) Accessing the national do-not-call database. The member uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.

(d) Procedures

Prior to engaging in telemarketing, a member must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(1) Written policy. Members must have a written policy for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, honoring of do-not-call requests. If a member receives a request from a person not to receive calls from that member, the member must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Members must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex partially amended the text of proposed amended Amex Rule 429 and made conforming and technical changes to the original filing.

[4] In Amendment No. 2, the Amex made additional changes to the text of proposed amended Amex Rule 429 and to the original filing.

are being recorded or maintained by a party other than the member on whose behalf the telemarketing call is made, the member on whose behalf the telemarketing call is made will be liable for any failure to honor the do not call request.

(4) Identification of sellers and telemarketers. A member or person associated with a member making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the member, an address or telephone number at which the member may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A member making calls for telemarketing purposes must maintain a record of the caller's request not to receive further telemarketing calls. A firm specific do-not-call request must be honored for five (5) years from the time the request is made.

(e) Wireless Communications

The provisions set forth in this rule are applicable to members telemarketing or making telephone solicitations calls to wireless telephone numbers.

(f) Outsourcing Telemarketing

If a member uses another entity to perform telemarketing services on its behalf, the member remains responsible for ensuring compliance with all provisions contained in this rule.

(g) Definitions

(1) Established business relationship

(A) An ''established business relationship'' exists between a member and a person if:

(i) The person has made a financial transaction or has a security position, a money balance, or account activity with the member within the previous eighteen months immediately preceding the date of the telemarketing call;

(ii) The member is the broker/dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or

(iii) The person has contacted the member to inquire about a product or service offered by the member within the previous three months immediately preceding the date of the telemarketing call.

(B) A person's established business relationship with a member does not extend to the member's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member's affiliate does not extend to the member unless the person would reasonably expect the member to be included.

(2) The terms ''telemarketing'' and ''telephone solicitation'' mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(3) The term ''personal relationship'' means any family member, friend, or acquaintance of the telemarketer making the call.

(4) The term ''account activity'' shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(5) The term ''broker/dealer of record'' refers to the broker/dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 429 currently limits members, member organizations, and associated persons from making outbound calls to the residence of any person for the purposes of soliciting the purchase of securities or related services between the hours of 8 a.m. and 9 p.m. It also requires disclosure to the called person of the caller's identity, firm telephone number and address, and the purpose of the call. Rule 429 currently creates exceptions from its time of day and disclosure requirements for telephone calls to certain categories of ''existing customers.''

The Exchange is proposing to amend Amex Rule 429 to incorporate applicable telemarketing regulations issued by the FCC and to require members and member organizations to participate in the national do-not-call registry maintained by the FTC.

Background

In 1992 and 1995, the FCC and the FTC established regulations requiring firms to maintain do-not-call lists and to limit the hours of telephone solicitations. The Telemarketing and Consumer Fraud Abuse Prevention Act of 1994 (the ''Telemarketing Act'') amended the Telephone Consumer Protection Act of 1991 (''TCPA'') and required the SEC to promulgate telemarketing rules substantially similar to those of the FTC, or direct self-regulatory organizations to do so, unless the SEC determined that such rules were not in the interest of investor protection.[5]

In 1996 and 1997 the Amex adopted Rule 428(a) and Rule 429 to require members and member organizations to maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from members or their associated persons, and to follow time-of-day restrictions on telemarketing.[6]

In 2003, the FCC and the FTC established rules requiring sellers and telemarketers to participate in a national do-not-call registry. These rules include a ''safe harbor'' for telemarketers that have made a good faith effort to comply with the national do-not-call rules. In March 2004, the FTC and FCC further amended their telemarketing rules to require the use of a national do-not-call registry that is no more than thirty-one (31) days old.

In correspondence dated February 3, 2005, Commission staff recommended that the Amex amend its telemarketing rules to require its members and member organizations to participate in

[5] *See* 15 U.S.C. 6102(d)(1).

[6] *See* Securities Exchange Act Release No. 36748 (January 19, 1996), 61 FR 2556 (January 26, 1996); Securities Exchange Act Release No. 38724 (June 6, 1997) 62 FR 32390 (June 13, 1997).

the national do-not-call registry.[7] Commission staff noted that NASD also had recently filed an amendment to their rules regarding the frequency of updates from the national do-not-call registry.[8] In this regard, proposed Rule 429 is substantially similar to the NASD rule that was approved by the Commission in January 2004 and amended in January 2005.[9]

Proposed Amex Rule 429

Paragraph (a)(1) of proposed Amex Rule 429 provides that members, member organizations, or persons associated with a member or member organization may engage in telephone solicitations only between the hours of 8 a.m. and 9 p.m. unless (1) they have an established business relationship with the called person; (2) the member has received that person's prior express invitation or permission; or (3) the person called is a broker-dealer. These provisions are essentially identical to those already in place, except the ''existing customer'' exception is being replaced with an ''established business relationship'' exception, mirroring the FCC's Rules. As defined in paragraph (g)(1)(A), an established business relationship exists if the person called has made a financial transaction, or has a security position, a money balance, or account activity with the member within the previous eighteen (18) months immediately preceding the date of the telemarketing call, if the member is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call, or when the person has contacted the member to inquire about a product or service offered by the member within the previous three (3) months immediately preceding the date of the telemarketing call.

Paragraph (a)(2) of proposed Amex Rule 429 prohibits members and member organizations, and persons associated with a member or member organization from initiating a telephone solicitation to any person listed on a firm specific do-not-call list. The firm specific do-not-call list is maintained pursuant to existing Amex Rule 428.

Paragraph (a)(3) of proposed Amex Rule 429 requires firms to participate in a national do-not-call list. Paragraph (b) of proposed Amex Rule 429 lists several exceptions to the national do-not-call list compliance requirement, where a member making telephone solicitations will not be liable for violating paragraph (a)(3). First, a member will not be found liable if they are able to demonstrate that there is an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception set forth in proposed Amex Rule 429(b), even if the person continues to do business with that member. The second exception applies if the member has obtained the person's prior express invitation or permission. Such permission must be confirmed by a signed written agreement between the person and the member, which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed. Finally, the member or associated person making the call will not be found liable if the associated person making the call has a personal relationship with the recipient of the call.

Paragraph 429(c) creates a safe harbor from the national do-not-call list requirements of paragraph (a)(3). To be eligible for this safe harbor, a member or person associated with a member making telephone solicitations must demonstrate that the member's routine business practice meets the following standards:

- The member must demonstrate that it has established and implemented written procedures to comply with the national do-not-call rules;
- The member must demonstrate that it has trained its personnel and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;
- The member must demonstrate that it has maintained and recorded a list of telephone numbers that it may not contact; and
- The member must demonstrate that it uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, and is employing a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.[10]

Paragraph 429(d) sets forth the procedures necessary for members to comply with Proposed Amex Rule 429(a). Under paragraphs 429(d)(1)–(d)(4), a firm's procedures must meet the following minimum standards:

- The member must have a written policy for maintaining a do-not-call list;
- The member must demonstrate that its personnel engaged in telemarketing are informed and trained in the existence and use of the do-not-call list;
- The member must record do-not-call requests when they are made and honor them within a reasonable time not to exceed 31 days;
- Members must provide the called party with the name of the individual caller, the name of the member, an address or telephone number at which the member may be contacted, and that the purpose of the call is to solicit the purchase of securities or a related service. Such telephone number may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.

Paragraph 429(d)(3) provides that a member will be liable for any failure to honor a do-not-call request by an entity recording or maintaining such requests on its behalf.

Paragraph 429(d)(5) provides that a person's do-not-call request applies to the member making the call, and not to affiliated entities, unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised, or unless the consumer specifically requests that it apply to affiliated entities. Finally, paragraph (d)(6) of proposed amended Amex Rule 429 requires that a member maintain a record of the caller's request not to receive further telemarketing calls. A firm specific do-not-call request must be honored for five (5) years from the time the request is made.

Paragraph 429(e) provides that the provisions of the proposed rule also apply to members telemarketing or making telephone solicitation calls to wireless telephone numbers. Paragraph 429(f) states that a member is responsible for complying with the foregoing provisions even if it uses another entity to perform telemarketing services on its behalf.

Paragraph 429(g) defines terms used in proposed amended Rule 429. As noted above, paragraph 429(g)(1)(A) codifies the definition of an established business relationship. Paragraph 429(g)(1)(B) further states that a person's established business relationship with a member does not extend to the member's affiliated entities unless the person would reasonably expect them to be included. Similarly, an established business relationship with an affiliate

[7] *See* Correspondence dated February 3, 2005 from Martha Mahan Haines, Assistant Director, Division of Market Regulation, SEC.

[8] *See* Securities Exchange Act Release No. 34–49055 (January 12, 2004); 69 FR 2801 (January 20, 2004). *See also* Securities Exchange Act Release No. 34–51023 (January 11, 2005); 70 FR 2083 (January 19, 2005).

[9] *Id.*

[10] As noted above, the thirty-one (31) day requirement is consistent with recent amendments to the FCC and FTC rules that became effective January 1, 2005.

does not extend to the member unless the person would reasonably expect the member to be included.

Paragraph 429(g)(2) defines the terms ''telemarketing'' and ''telephone solicitation'' to mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

The term ''personal relationship'' is defined in paragraph 429(g)(3) as any family member, friend, or acquaintance of the telemarketer making the call. The term ''account activity'' as defined in paragraph 429(g)(4) shall include, but not be limited to, purchases, sales interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member. Finally, the term ''broker/dealer of record'' as defined in paragraph 429(g)(5) refers to the broker/dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act [11] in general and furthers the objectives of Section 6(b)(5) [12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes the proposed rule change will enhance investor protection by enabling persons who do not want to receive telephone solicitations from members or member organizations to receive the protections of the national do-not-call registry.

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 not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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 *rulecomments@sec.gov*. Please include File Number SR–Amex–2005–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–064 and should be submitted on or before December 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6828 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52851; File No. SR–CBOE–2005–84]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Fees for Options on the Dow Jones Industrial Average

November 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On November 22, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The CBOE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the proposed rule text to amend the fees assessed to non-member market-makers for transactions in options on the Dow Jones Industrial Average (''DJX options'') and in ''Jumbo'' options on the Dow Jones Industrial Average (''DXL options''). The Exchange states that this change in fees assessed to non-member market-makers for transactions in DJX

has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) 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 Exchange proposes to amend its Fees Schedule to: (i) Amend certain fees for DJX options, and (ii) establish fees for DXL options. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also included below. Proposed new language is *italicized*; proposed deletions are in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[OCTOBER 1, 2005] *NOVEMBER 2, 2005*

1. OPTIONS TRANSACTION FEES (1)(3)(4)(7)(16): PER CONTRACT

EQUITY OPTIONS (13):

I.–IX. Unchanged.

QQQQ and SPDR OPTIONS:

I.–VII. Unchanged.

INDEX OPTIONS (includes Dow Jones DIAMONDS, OEF and other ETF and HOLDRs options) (17):

I. CUSTOMER (2):	
• S&P 100, PREMIUM > or = $1	$.35
• S&P 100, PREMIUM < $1	$.20
• *DJX,* MNX, [and] NDX, *RUT and RMN*	$.15
• [RUT and RMN	$.15]
• ETF and HOLDRs options	$.15
• OTHER INDEXES, PREMIUM > OR = $1	$.45
• OTHER INDEXES, PREMIUM < $1	$.25
II. MARKET-MAKER AND DPM *(10):* [—EXCLUDING DOW JONES PRODUCTS OTHER THAN DIA (10)$.24]	
[MARKET-MAKER—DOW JONES PRODUCTS (except DIA) (10)	$.34]
• *DOW JONES PRODUCTS (except DIA and DJX)*	*$.34*
• *OTHER INDEXES*	*$.24*
III. MEMBER FIRM PROPRIETARY: (11)	
• FACILITATION OF CUSTOMER ORDER, MNX and NDX	$.24
• FACILITATION OF CUSTOMER ORDER, OTHER INDEXES	$.20
• NON-FACILITATION ORDER	$.24
IV. BROKER-DEALER (EXCLUDING THE PRODUCTS BELOW) INDEX CUSTOMER RATES.	
• *DJX,* ETF (except DIA), HOLDRS, RUT and RMN, PREMIUM > or = $1	$.45
• *DJX*, ETF (except DIA), HOLDRS, RUT and RMN, PREMIUM < $1	$.25
• DIA, MNX and NDX	$.25
V. NON-MEMBER MARKET MAKER:	
• DIA *and DJX*	$.26
• *DXL*	*$.36*
• S&P 100 (including OEF), PREMIUM > or = $1	$.37
• S&P 100 (including OEF), PREMIUM < $1	$.22
• OTHER INDEXES, PREMIUM > or = $1	$.47
• OTHER INDEXES, PREMIUM < $1	$.27
VI.– IX. Unchanged.	
2. MARKETING FEE (6)(16)	$.22
3. FLOOR BROKERAGE FEE (1)(5)(16)(17):	
• EQUITY & QQQQ CUSTOMER ORDER	$.00
• ALL OTHER EQUITY, QQQQ AND INDEX OPTIONS (8)	$.04
• CROSSED ORDERS	$.02
4. RAES ACCESS FEE (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4)(16):	
• INDEX CUSTOMER TRANSACTIONS	$.25
• DOW JONES, ASSESSED ON THE FIRST 25 CONTRACTS ONLY	
• NON-CUSTOMER TRANSACTIONS (ORIGIN CODE OTHER THAN ''C'')(8)(9)	$.30
FOOTNOTES: Unchanged.	
5.–6. Unchanged.	

7. INDEXES CUSTOMER ORDER BOOK OFFICIAL (OBO) EXECUTION FEES(16)(17):

	Rate Per Contract (1)
Accommodation Liquidation Or Cabinet Order	$.10
All Other Orders	.25

(1) OEX—No charge for ''market'' and ''limit orders'' placed with the OBO prior to the opening and executed during opening rotation.

Other Indexes—Same as above for index ''market orders'' (''limit orders'' not included).

options and DXL options will be implemented on December 1, 2005.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The effective date of the original proposed rule change is October 11, 2005, and the effective date of Amendment No. 1 is November 22, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 22, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Remainder of Fees Schedule—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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to reduce and eliminate certain fees for DJX options and to establish fees for DXL options.

a. *DJX Options Fees.* The Exchange proposes to reduce customer and non-member market-maker fees for transactions in DJX options and eliminate the market-maker license fee surcharge applicable to transactions in DJX options.

Currently, customer transaction fees for transactions in DJX options are $.45 if the premium is greater than or equal to $1 and $.25 if the premium is less than $1. The Exchange proposes to reduce fees for public customer transactions in DJX options to $.15 per contract. Moreover, the transaction fees for non-member market-maker transactions in DJX options are currently $.47 per contract if the premium is greater than or equal to $1 and $.27 per contract if the premium is less than $1. The Exchange proposes to reduce the non-member market maker transaction fee for transactions in DJX options to $.26 per contract, regardless of the premium.[7]

In addition, the Exchange currently charges market-makers that trade Dow Jones products, except options on DIAMONDS (''DIA''), a license fee of $.10 per contract in addition to the regular transaction fee of $.24 per contract, to assist the Exchange in offsetting some of the royalty fees the Exchange must pay to Dow Jones for its license to trade Dow Jones products.[8] The Exchange proposes to eliminate the $.10 license fee with respect to market-maker transactions in DJX options.[9]

The Exchange is reducing these fees in connection with DJX options moving to CBOE's Hybrid Trading System.[10] The proposed fees changes are intended to make DJX options competitively priced with respect to DIA options.

b. *DXL Options.* The Exchange launched trading in DXL options on October 11, 2005.[11] DXL options are options that are based on one-tenth the value of the Dow Jones Industrial Average (''DJIA'').[12] DXL options will trade in open outcry. The Exchange proposes to amend its Fees Schedule to establish fees for DXL options.

Specifically, the Exchange proposes to assess public customers a transaction fee for DXL options of $.45 if the premium is greater than or equal to $1 and $.25 if the premium is less than $1. Market-maker transaction fees for DXL options will be $.34, which consists of the standard $.24 transaction fee and the $.10 license fee surcharge assessed on certain Dow Jones index options as described above. Non-member market-maker transaction fees for DXL options will be $.36, regardless of the premium.[13]

Member firm proprietary transaction fees for DXL options will be $.20 for facilitation of customer orders and $.24 for non-facilitation orders. Broker-dealer transaction fees for DXL options will be $.45 if the premium is greater than or equal to $1 and $.25 if the premium is less than $1.

The floor brokerage fee for DXL options will be $.04, and for crossed orders, the floor brokerage fee will be $.02. The RAES Access Fee will be $.25 for customer transactions (only the first 25 contracts will be assessed) and $.30 for non-customer transactions. Order Book Official (''OBO'') execution fees will be $.10 per contract for cabinet and accommodation/liquidation trades and $.25 per contract for all other orders.

2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and Rule 19b–4(f)(2)[17] thereunder, because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.[18] At any time within 60 days of the filing of the proposed rule change, as amended, 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.[19]

[7] *See* Amendment No. 1, *supra* note 3. According to CBOE, the proposed change to the fees assessed to non-member market-makers for transactions in DJX options will be implemented on December 1, 2005.

[8] *See* Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978, 44979 (July 31, 2003).

[9] The Commission notes that the Exchange currently charges market-makers that trade Dow Jones products, except DIA options, a total fee of $.34 per contract, which reflects a $.10 licensing fee surcharge. Under the proposed rule change, the fee for market-makers that trade DJX options will be $.24 per contract.

[10] Conversation between Jaime Galvan, Assistant Secretary, CBOE and Sara Gillis, Attorney, Division of Market Regulation, Commission on November 23, 2005.

[11] *Id.*

[12] DXL options are referred to as ''Jumbo-DJX'' options because they are ten times larger than DJX options (DJX options are based on 1/100th the value of the DJIA).

[13] *See* Amendment No. 1, *supra* note 3. CBOE had originally proposed to charge non-member market-makers a transaction fee for transactions in DXL options of $.47 per contract if the premium was greater than or equal to $1 and $.27 per contract if the premium was less then $1. In Amendment No. 1, CBOE proposed to change the non-member market-maker transaction fees for DXL options to $.36 per contract, regardless of the premium. According to CBOE, the proposed change to the fees assessed to non-member market-makers for transactions in DXL options will be implemented on December 1, 2005.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] *See supra* note 6.

[19] *Id.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–84 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–84 and should be submitted on or before December 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6831 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52852; File No. SR–DTC–2005–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Scope of Risk Management Controls as They Relate to Maturity Presentment Transactions of Pledged Money Market Instruments

November 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 28, 2005, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on November 16, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify the scope of DTC's use of risk management controls as they relate to maturity presentment (''MP'') transactions of pledged Money Market Instruments (''MMIs'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies the scope of DTC's use of risk management controls as they relate to MP transactions of pledged MMIs.[3] Specifically, pledged MP transactions shall be processed in the same manner as non-pledged MP transactions[4] and therefore subject to DTC's collateral monitor and net debit cap controls.[5] As is the case for unpledged MPs, pledged MPs shall only be processed if they will not cause the IPA's collateral monitor or net debit cap to become negative.

Other pledged MPs shall recycle in a ''pend'' queue until additional collateral or liquidity for the IPA is infused later in the day, which may come from payments sent to DTC by the IPA or from credits resulting from the issuance of new commercial paper.

The proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to DTC because it assures the safeguarding of securities and funds which are in the custody or control of DTC because pledged MP transactions will be processed in the same manner as non-pledged MP transactions and therefore

[3] For background information regarding DTC's MMI program, *see* Securities Exchange Act Release Nos. 49618 (April 26, 2004), 69 FR 23840 [File No. SR–DTC–2003–12]; 48145 (July 9, 2003), 68 FR 42442 [File No. SR–DTC–2003–03]; 39422 (December 17, 1997), 62 FR 66158 [File No. SR–DTC–97–20]; 36811 (February 5, 1996), 61 FR 5433 [File No. SR–DTC–95–15]; 35655 (April 28, 1995), 60 FR 22423 [File No. SR–DTC–95–05]; 33958 (April 22, 1994), 59 FR 22878 [File No. SR–DTC–93–12]; and 28424 (September 11, 1990), 55 FR 38428 [File No. SR–DTC–90–08].

[4] MMI maturity processing is initiated automatically each morning by DTC, which electronically sweeps all maturing positions of MMI CUSIPs from investors' custodian accounts and generates the appropriate MPs. The MMI is then delivered to the account of the appropriate issuing/paying agent (''IPA''). DTC debits the IPA's account in the amount of the maturity proceeds for settlement that day. DTC credits the same amount of the maturity proceeds to the investor's custodian account for payment that day to the investor. Processing of a pledged maturing MMI uses a DTC internal account and generates deliver orders from the internal account to the pledgor upon the processing of the release. However, in the event of a market disruption, pledged MMIs will be automatically swept and processed and will not be included in the maturity presentment contingency system (MPCS) processing as are non-pledged MMIs, which can be selectively released for processing in a market disruption using MPCS.

[5] Dealers or custodian banks may pledge MMI positions to a pledgee bank. When the applicable MMI matures, MP transactions are staged to DTC's Account Transaction Processor to deliver the pledged position from an internal DTC account to the IPA in exchange for the total maturity payment of the pledged position.

[6] 15 U.S.C. 78q–1.

subject to collateral monitor and net debit cap controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on 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

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because the proposed rule change 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 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.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2005–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–DTC–2005–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *https://login.dtcc.com/dtcorg/*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–DTC–2005–18 and should be submitted on or before December 27, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6825 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 16, 2005, the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52850; File No. SR–NYSE–2004–51]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to a Proposed Interpretation to Rule 342 (Offices—Approval, Supervision, and Control)

November 29, 2005.

I. Introduction

On September 3, 2004, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed Interpretation of Exchange Rule 342 (Offices—Approval, Supervision, and Control) to permit the waiver of the qualified resident branch office manager requirement for ''limited purpose offices'' with more than three registered representatives (''RRs''). On September 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change, replacing the original filing in its entirety.[3] The proposed rule change was published for comment in the **Federal Register** on October 25, 2005.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of Proposed Rule Change

Currently, except for ''small offices,''[5] all member and member organization branch offices are required to have an on-site qualified manager. According to the Exchange, member organizations with branch offices that have a limited scope of activities, but that do not meet the definition of ''small office'' under the Interpretation, have approached the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 more fully describes the factors to be used in determining whether a location qualifies as a limited purpose office, as well as how those factors will be considered by the Exchange when examining an application for a limited purpose office status. The proposed rule change is described in its entirety in Section II below.

[4] *See* Securities Exchange Act Release No. 52640 (October 19, 2005), 70 FR 61672 (October 25, 2005).

[5] The Interpretation of NYSE Rule 342.15 limits a small office to a total of three RRs. Small offices that serve an order-taking function only and have no operational facilities are not required to have a qualified manager on-site if they are under the close supervision of the main office or other designated branch offices. *See* NYSE Rule Interpretation 342.15/01–02. In addition, supervision and control procedures must be made part of the member's or member organization's written plan of supervision.

Exchange seeking relief from the requirement that such offices have a qualified branch office manager on-site. The Exchange explains that there has been a large increase in the number of small, multi-function offices that offer a combination of services related not only to securities brokerage, but also to banking and insurance products. In fact, many banks and insurance companies with broker-dealer alliances or affiliates often ''dually employ'' their personnel with the registered broker-dealer. Because the dually employed persons often primarily conduct business (*e.g.*, banking and insurance) other than broker or dealer activities, they typically physically remain on bank and insurance company premises. However, because they are employees of the registered broker-dealer as well, the location is considered a branch office pursuant to NYSE Rule 342 and must have an on-site qualified manager if more than three RRs are employed there.

According to the Exchange, advances in technology have resulted in increasingly sophisticated surveillance capabilities that enable Exchange members and member organizations to more effectively supervise and control the business activities of their associated persons in branch offices from remote locations, such as another branch office or a firm's main office. For example, supervisors and firms use centralized communication networks to monitor their employees' activities and communication with customers, as well as the trading and handling of funds in customer accounts serviced in branch offices. The use of surveillance systems and exception reports that are linked to the broker-dealer's internal order management system further enhances this remote supervision.

Given these surveillance and monitoring capabilities, and the often-limited scope of securities-related business activities conducted in many offices, the Exchange believes that the requirement to have an on-site qualified branch office manager may often be neither practical nor necessary for its members. Consequently, the Exchange re-examined its ''four-or-more'' standard for requiring on-site supervision, and proposed an alternative system for granting regulatory relief currently available only to small offices.

The proposed rule change sets forth a process by which Exchange members and member organizations may seek a waiver of the on-site branch office manager requirement for ''limited purpose offices,'' which are a proposed new category of offices that have more than three RRs and conduct limited securities-related business activities. Under the proposed rule change, members and member organizations seeking a waiver of the on-site qualified branch office manager requirement for limited purpose offices would be required to provide a written plan of risk-based supervision and control acceptable to the Exchange. Notwithstanding the grant of a waiver, all limited purpose offices would be required to be under the close supervision and control of a qualified person, as defined under NYSE Rule 342.13, at the main office or other designated branch office.

The proposed Interpretation sets forth factors to be used in determining whether a location qualifies as a limited purpose office and the supervisory requirements for each such office, including:

(i) The number of registered persons in the office (the RR to offsite Branch Office Manager ratio), their registration category, and the functions they perform (the nature and level of the RRs' responsibilities would be taken into account);

(ii) the scope and types of business activities conducted (in general, the nature of business should not pose special risks or otherwise warrant on-site supervision);

(iii) the nature and complexity of products and services offered (likewise, the products and services offered should not pose special risks or otherwise warrant on-site supervision);

(iv) the volume of business done (*e.g.*, annual revenues, number of transactions, number of customers, etc. Locations with high activity levels would generally be deemed more likely to require an on-site manager);

(v) the adequacy of procedures to supervise the limited purpose office activities; and

(vi) the adequacy and independence of systems and supervisory persons for regular and ''for cause'' internal and third party inspections and audits.[6]

With respect to factors (v) and (vi) above, the Exchange expects members and member organizations to present a system of supervision and control that is reasonably designed to detect and prevent regulatory violations and that otherwise meets the requirements of NYSE Rule 342. Such a system should include, but is not limited to, the following elements, where applicable: (1) Clearly articulated policies and procedures, and sufficient resources to implement them; (2) systematic monitoring of activity using routine and exception reporting criteria; (3) an appropriate system of follow-up and review if ''red flags'' are detected, and mechanisms for verifying that deficiencies are corrected; (4) routine and ''for cause'' inspections, including possible use of unannounced surprise inspections; (5) offsite monitoring of trading, handling of funds, and use of personal computers; (6) adequate designation of supervisors and clearly delineated supervisory responsibilities, including a system of review and follow-up to ensure that such supervision is sufficiently independent and is diligently exercised; (7) monitoring of outside business activities and outside accounts; (8) monitoring and surveillance of internal and external communications; and (9) the education and training of RRs and their supervisors to ensure they understand their responsibilities under the firm's procedures and all applicable securities laws.

In addition to the elements enumerated above, members and member organizations should also take into consideration relevant guidance provided by the Exchange and other regulatory bodies when developing their supervisory plan for a proposed limited purpose office.[7]

All of the above factors will be considered as a whole to determine whether an application for limited purpose office status should be granted. However, any one factor could cause an application to be delayed or rejected by the Exchange if it raises a substantive issue with respect to the appropriateness or advisability of a remote supervisory arrangement. If an application for limited purpose office status encompasses more than one office, pursuant to a categorical description or plan, the member organization must submit the proposed list of prospective offices so as to disclose the scope of the request.

In addition, members and member organizations will be responsible for maintaining a readily available, current and accurate list of all locations either specifically approved and designated by the Exchange as a limited purpose office, or otherwise designated as such pursuant to a general categorical description or plan approved by the Exchange. Further, any material change with respect to the representations made by any member or member organization pursuant to the proposed Interpretation

[6] *See also* NYSE Info Memo 04–38 regarding independence of supervision and internal controls.

[7] *See, e.g.*, NYSE Info Memo 04–38 (Amendments to Rules 342, 401, 408 and 410 Relating to Supervision and Internal Controls) (July 26, 2004); SEC Division of Market Regulation Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004).

with respect to any location so approved and designated must be promptly brought to the attention of the Exchange for reconsideration.

III. Discussion and Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

According to the Exchange, many broker-dealer business models are becoming more reliant on offices of more than three RRs that service geographically isolated locations, but do not offer a full line of securities products and services. Given that the proposed safeguards are designed to promote effective supervisory procedures, the Commission believes it is reasonable for the Exchange to have more flexibility and discretion to determine whether a qualified on-site branch office manager is necessary for offices that engage in a limited scope of securities-related business activity. The Commission also believes that the proposed Interpretation strikes an appropriate balance between providing flexibility to the Exchange to accommodate the evolving business models of its members, while at the same time setting parameters to ensure that limited purpose offices will continue to be effectively supervised. To further ensure that such offices receive effective remote supervision, the Commission expects the Exchange to review plans of risk-based supervision and control for limited purpose offices and their implementation as part of the Exchange's regular examination of members and member organizations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act[10] that the proposed rule change (SR–NYSE–2004–51) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6820 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposed rule change, 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)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52843; File No. SR–NYSE–2005–65]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Euro Currency Trust

November 28, 2005.

I. Introduction

On September 29, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Euro Shares under new NYSE Rules 1300A *et seq.* The proposed rule change was published for comment in the **Federal Register** on November 10, 2005 for a 15-day comment period, which ended on November 25, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade Euro Shares (''Shares''), which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust (''Trust''). As stated in the Trust's Registration Statement,[4] the investment objective of the Trust, which will hold euro as its sole asset, is for the Shares to reflect the value of the euro. To facilitate trading of the new product, the NYSE has proposed new NYSE Rules 1300A and 1301A that will govern the trading of Shares on the Exchange. Information about the liquidity, depth, and pricing mechanisms of the euro market, management and structure of the Trust, and description of the Shares follows below.

A. Description of the Foreign Exchange Industry and the Euro

The Exchange represents that the foreign exchange market is the largest and most liquid financial market in the world. The Exchange states that, as of April 2004, the foreign exchange market experienced average daily turnover of approximately $1.88 trillion, which was a 57% increase (at current exchange rates) from 2001 daily averages. The foreign exchange market is predominantly an over-the-counter market with no fixed location, and it operates 24 hours a day, seven days a week. London, New York, and Tokyo are the principal geographic centers of the worldwide foreign exchange market, with approximately 58% of all foreign exchange business executed in the United Kingdom, United States (''U.S.''), and Japan.

Approximately 89% of foreign exchange transactions involve the U.S. dollar (''USD''), and approximately 37% involve the euro. The Exchange represents that the euro/USD pair is by far the most-traded currency pair and in recent years has comprised approximately 28% of the global turnover in foreign exchange. As of September 26, 2005, $1 USD was worth approximately 0.828 euro, calculated at the then-current Noon Buying Rate.[5]

The Exchange states that there are three major kinds of transactions in the traditional foreign exchange markets: spot transactions, outright forwards, and foreign exchange swaps. There also are transactions in currency options, which trade both over-the-counter and, in the U.S., on the Philadelphia Stock Exchange (''Phlx''). Currency futures are traded on a number of regulated markets, including the International Monetary Market division of the Chicago Mercantile Exchange (''CME''), the Singapore Exchange Derivatives Trading Limited (''SGX,'' formerly the Singapore International Monetary Exchange or SIMEX), and the London International Financial Futures

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52715 (November 1, 2005), 70 FR 68490 (''Notice'').

[4] The Sponsor, on behalf of the Trust, filed the Form S–1 (the ''Registration Statement'') on June 7, 2005, Amendment No. 1 thereto on August 12, 2005, and Amendment No. 2 thereto on October 25, 2005. *See* Registration No. 33–125581.

[5] For April 2004, the daily average foreign exchange turnover of the U.S. dollar against the euro was approximately $550 billion. *See* Bank for International Settlements, Triennial Central Bank Survey, March 2005, Statistical annex tables, Table E–2. In addition, the reported daily turnover of foreign exchange contracts (USD against euro) in over-the-counter derivatives markets for April 2004, including outright forwards and Forex swaps, was $1.15 trillion. *See id.* at 17.

Exchange (''LIFFE'').[6] Over 85% of currency derivative products (swaps, options, and futures) are traded over-the-counter.[7]

The primary participants in the foreign exchange market are banks (including government-controlled central banks), investment banks, money managers, multinational corporations, and institutional investors. The most significant participants are the major international commercial banks that act both as brokers and as dealers. In their dealer role, these banks maintain long or short positions in a currency and seek to profit from changes in exchange rates. In their broker role, the banks handle buy and sell orders from commercial customers, such as multinational corporations.

The Euro. According to the Registration Statement, in 1998, the European Central Bank in Frankfurt was organized by Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain in order to establish a common currency—the euro. In 2001, Greece joined as the twelfth country adopting the euro as its national currency. Unlike the U.S. Federal Reserve System, the Bank of Japan, and other comparable central banks, the European Central Bank is a central authority that conducts monetary policy for an economic area consisting of many otherwise largely autonomous states.

Foreign Currency Regulation. Most trading in the global over-the-counter foreign currency markets is conducted by regulated financial institutions, such as banks and broker-dealers. In addition, in the U.S., the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.

Participants in the U.S. over-the-counter market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities. In addition, in the U.S., the SEC regulates trading of options on foreign currencies on the Phlx, and the Commodity Futures Trading Commission (''CFTC'') regulates trading of futures, options, and options on futures on foreign currencies on regulated futures exchanges.

The Phlx, CME, SGX, and LIFFE have authority to perform surveillance on their members' trading activities, review positions held by members and large-scale customers, and monitor the price movements of options and/or futures markets by comparing them with cash and other derivative markets' prices.

B. Trust Management and Structure

The Exchange proposes to list and trade Shares, which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the value of the euro. The Trust's assets will consist only of euro on demand deposit in a euro-denominated, interest-bearing account at JPMorgan Chase, London Branch.[8] The Trust will not hold any derivative products. Each Share will represent a proportional interest, based on the total number of Shares outstanding, in the euro owned by the Trust, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The price of a Share will reflect accumulated interest, as well as the estimated accrued but unpaid expenses of the Trust. The Trust will terminate upon the occurrence of any of the termination events listed in the Depositary Trust Agreement and will otherwise terminate on a specified date in 2045.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity.[9]

Rydex Specialized Products LLC is the sponsor of the Trust (''Sponsor''), The Bank of New York is the trustee of the Trust (''Trustee''), JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trust (''Depository''), and Rydex Distributors, Inc. is the distributor for the Trust (''Distributor''). The Sponsor, Trustee, Depository, and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated.

C. Trust Expenses and Management Fees

The Trust will use interest earned on the Deposit Account to pay the Sponsor's fee and any other Trust expenses that may arise from time to time. If that interest is not sufficient to fully pay the Sponsor's fee and Trust expenses, then the Trustee will sell deposited euro as needed.

The Trust's only ordinary recurring expense is expected to be the Sponsor's fee, and, in turn, the Sponsor is obligated to pay: The Trustee's monthly fee, the Distributor's fee, NYSE listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses, and up to $100,000 per year in legal fees and expenses. The Sponsor is also obligated to pay the costs of the Trust's organizational expenses and the costs of the initial sale of the Shares, including the applicable SEC registration fees.[10]

Under the Deposit Account Agreement, the Depository is entitled to invoice the Trustee or debit the Deposit Account for certain out-of-pocket expenses; however, except for certain reimbursable expenses, the Depository will not be paid a fee for its services to the Trust.

The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the euro and that the price of a Share will reflect accumulated interest, as well as the estimated accrued but unpaid expenses of the Trust.

D. Description and Characteristics of the Shares

1. Net Asset Value and Distributions

The Trustee expects to determine the net asset value (''NAV'') of the Trust between 12 p.m. and 2 p.m. (New York time) each business day. In doing so, the Trustee will value the euro held by the

[6] Volume in euro futures (Euro FX) on the CME for 2004 was 17,791,457 contracts. The 2005 Euro FX futures volume on the CME through October 19, 2005 was 25,222,252 contracts. Euro options (EURFX) volume on the Phlx was 6,162 contracts in June 2005 and 2,918 in July 2005. The 2005 EURFX volume through July was 33,408 contracts. *See* Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2005 (confirming Euro FX volume on CME).

[7] *See* Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004, September 2004 (Tables 2 and 6).

[8] The Deposit Account is the euro account of the Trust established with the Depository (the London branch of JP Morgan Chase Bank, N.A.) by the Deposit Account Agreement. The Deposit Account holds the euro deposited with the Trust.

[9] The Exchange states that the Trust is not a registered investment company under the Investment Company Act of 1940 (''1940 Act'') and is not required to register under the 1940 Act.

[10] The following additional expenses may be charged to the Trust: (1) Expenses and costs of any extraordinary services performed by the Trustee or the Sponsor on behalf of the Trust or action taken by the Trustee or the Sponsor to protect the Trust or interests of Shareholders; (2) indemnification of the Sponsor; (3) taxes and other governmental charges; and (4) expenses of the Trust other than those the Sponsor is obligated to pay pursuant to the Depositary Trust Agreement.

Trust on the basis of the Noon Buying Rate, which is the USD/euro exchange rate as determined by the Federal Reserve Bank of New York as of 12 p.m. (New York time) on each day that the NYSE is open for regular trading.[11] If, on a particular business day, the Noon Buying Rate has not been determined and announced by 2 p.m. (New York time), then the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate will be used to determine the value of the euro held by the Trust, unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate to use as the basis for such valuation. In the event that the Trustee and the Sponsor determine that the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate is not an appropriate basis for valuation of the Trust's euro, they shall determine an alternative basis for such evaluation to be employed by the Trustee.

To calculate the NAV of the Trust, the Trustee will subtract the Sponsor's accrued fee for the current day from the euro held by the Trust (including all unpaid interest accrued through the immediately preceding day). The Trustee will also determine the NAV per Share, which equals the NAV of the Trust divided by the number of outstanding Shares.[12] The NAV will be posted on the Trust's Web site as soon as the valuation of the euro held by the Trust is complete (ordinarily by 2:00 p.m. (New York time)). Ordinarily, it will be posted no more than thirty minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York. The Exchange states that all market participants will have access to this data at the same time and, therefore, no market participant will have a time advantage in using such data.

Distributions. The Depositary Trust Agreement requires the Trustee to promptly distribute ''Surplus Property'' that are in USD and sell or convert all other Surplus Property into USD and distribute the proceeds. ''Surplus Property'' includes, among other things, interest on euro in the Deposit Account that the Trustee determines is not required to pay estimated Trust expenses within the following month. In addition, if the Trust is terminated and liquidated, then the Trustee will distribute to the Shareholders upon surrender of their Shares any amounts remaining after the satisfaction of all outstanding liabilities of the Trust and the establishment of such reserves for applicable taxes, other governmental charges and contingent or future liabilities as the Trustee shall determine. All distributions will be made monthly in USD. The Trustee will effectuate the conversion and will determine the exchange rate, which will be proximate to the Noon Buying Rate on the record date for the distribution. Shareholders of record on the record date fixed by the Trustee for any distribution will be entitled to receive their pro-rata portion of the distribution.[13]

2. Liquidity

The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the major euro markets and the NYSE. The period of greatest liquidity in the euro market is typically that time of the day when trading in the European time zones overlap with trading in the U.S., which is when over-the-counter market trading in London, New York, and other centers coincides with futures and options trading on the euro. While the Shares will trade on the NYSE until 4:15 p.m. (New York time), liquidity in the over-the-counter market for euro will be slightly reduced after the close of the London foreign currency markets.

Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the value of underlying euro held by the Trust. The Exchange states that the arbitrage process, which, in general, provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts, and can be expected to operate efficiently in the case of the Shares and euro.

3. Creation and Redemption of Trust Shares

The Trust will create Shares on a continuous basis only in aggregations of 50,000 Shares (such aggregation referred to as a ''Basket'') in exchange for deposits of euro and will distribute euro in connection with redemptions of Baskets. Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Shares for resale. Each Share will initially represent 100 euro. Except when aggregated in Baskets, the Shares are not redeemable. The Trust will impose transaction fees in connection with creation and redemption transactions.

The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of euro represented by the Baskets being created or redeemed. This amount is based on the combined NAV per Share of the number of Shares included in the Baskets being created or redeemed, determined on the day the order to create or redeem Baskets is properly received. The number of Shares outstanding is expected to increase and decrease from time to time as a result of the creation and redemption of Baskets. Authorized Participants pay for Baskets with euro. Shareholders pay for Shares with U.S. dollars.

The Exchange states that certain Authorized Participants are expected to have the facilities to participate directly in the global foreign exchange market. In some cases, an Authorized Participant may acquire euro from, or sell euro to, an affiliated foreign exchange trading desk, which may profit in these instances. The Sponsor believes that the size and operation of the foreign exchange market make it unlikely that an Authorized Participant's direct activities in the foreign exchange and securities markets will impact the price of euro or the price of Shares. The Exchange states that each Authorized Participant is (i) regulated as a broker-dealer regulated under the Exchange Act and registered with the National Association of Securities

[11] The Trustee and the Sponsor may determine to apply an alternative basis for evaluation in extraordinary circumstances, such as if the Federal Reserve Bank of New York does not announce a Noon Buying Rate, or discontinues such announcements, or if there is an extraordinary change in the spot price of euro after the Noon Buying Rate is established. In the event the Sponsor and Trustee determine to use, on a regular and ongoing basis, a source other than the Noon Buying Rate, the Exchange will make an appropriate filing pursuant to Rule 19b–4 under the Exchange Act.

[12] Shares deliverable under a purchase order will be considered outstanding for purposes of determining NAV per Share; Shares deliverable under a redemption order will not be considered outstanding for this purpose.

[13] On the last calendar day of each month, the Depository will deposit into the Deposit Account the accrued but unpaid interest for that month and pay the accrued Sponsor's fee for the month plus any other Trust expenses. If the last calendar day of the month is not a business day, the deposit of interest and payment of the Sponsor's fee and expenses will be made on the next following business day. In the event that the interest deposited exceeds the sum of the Sponsor's fees for the month plus other Trust expenses, if any, then the Trustee shall convert the excess into dollars based on the Noon Buying Rate and distribute the dollars promptly to Shareholders of record on the last calendar day of the month, on a pro rata basis (in accordance with the number of Shares that they own). The distribution per Share shall be rounded down to the nearest penny, and any excess remaining after the rounding shall be retained by the Trust in euro.

Dealers, Inc. (''NASD''), or (ii) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Exchange Act or registered with the NASD, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.[14] Certain Authorized Participants will be regulated under federal and state banking laws and regulations. The Exchange states that each Authorized Participant will have its own set of rules and procedures, internal controls, and information barriers as it determines is appropriate in light of its own regulatory regime. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

4. Information About Underlying Euro Holdings

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency, such as euro, over the Consolidated Tape. However, the last sale price for the Shares will be disseminated over the Consolidated Tape, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of euro price and euro market information available on public Web sites and through professional and subscription services. In most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

Investors may obtain on a 24-hour basis euro pricing information based on the euro spot price from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. Complete real-time data for euro futures and options prices traded on the CME and Phlx are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

There are a variety of other public Web sites that provide information on foreign currency and the euro, such as Bloomberg (*http://www.bloomberg.com/markets/currencies/eurafr_currencies.html*), which regularly reports current foreign exchange pricing for a fee. Other service providers include CBS Market Watch (*http://www.marketwatch.com/tools/stockresearch/globalmarkets*) and Yahoo! Finance (*http://finance.yahoo.com/currency*). Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[15] The Exchange states that, like bond securities traded in the over-the-counter market with respect to which pricing information is available directly from bond dealers, current euro spot prices are also generally available with bid/ask spreads from foreign currency dealers.

In addition, the Trust's Web site will provide the following information: (1) The euro spot price,[16] including the bid and offer and the midpoint between the bid and offer for the euro spot price, updated every 5 to 10 seconds; [17] (2) an intraday indicative value (''IIV'') per share for the Shares calculated by multiplying the indicative spot price of euro by the quantity of euro backing each Share, on a 5- to 10-second delay basis; [18] (3) a delayed indicative value (subject to a 20-minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20-minute delayed basis; (5) the NAV of the Trust as calculated each business day by the Sponsor; (6) accrued interest per Share; (7) the daily Federal Reserve Bank of New York Noon Buying Rate; (8) the Basket Euro Amount; and (9) the last sale price (under symbol FXE) of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[19] The Exchange will provide on its own public Web site (*http://www.nyse.com*) a link to the Trust's Web site. The market prices for the Shares will also be available from a variety of sources, including brokerage firms, financial information Web sites, and other information service providers.

E. Initial Share Issuance and Continued Listing

Bear Hunter Structured Products, LLC is expected to purchase three Baskets, representing 150,000 Shares, as the initial seed Baskets, which will be outstanding at the commencement of trading on the Exchange.[20] Each Share will initially represent 100 euro. The Exchange's original listing fee applicable to the listing of the Trust will be $5,000. The annual continued listing fee for the Trust will be $2,000.

The Exchange's applicable continued listing criteria require it to delist the Shares if any of the following occur: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of euro is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Exchange, or the Exchange stops providing a hyperlink on the Exchange's Web site to any such unaffiliated euro value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur

[14] The Commission notes that as of October 1, 2003, the temporary exemption for banks from the definition of ''dealer'' under the Act expired. Accordingly, banks that act as Authorized Participants should consider whether they are ''dealers'' under the federal securities laws. *See* 15 U.S.C. 78c(a)(5); Securities Exchange Act Release No. 47364 (February 14, 2003), 68 FR 8686 (February 24, 2003).

[15] There may be incremental differences in the euro spot price among the various information service sources. While the Exchange believes the differences in the euro spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of euro or foreign currency derivatives, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[16] The Trust Web site's euro spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The NYSE will provide a link to the Trust Web site. The Bullion Desk is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor, or the Exchange. In the event that the Trust's Web site should cease to provide this euro spot price information from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will halt trading in the Shares and commence delisting proceedings for the Shares. *See infra,* note 26.

[17] The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares. Assuming a euro spot bid of $1.2235 and an offer of $1.2236, the midpoint would be calculated as follows:

(Euro spot bid plus ((euro spot offer minus euro spot bid) divided by 2)) or ($1.2235 + (($1.2236 − $1.2235)/2)) = $1.22355.

[18] The intraday indicative value of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value, and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. *See, e.g.,* Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR–NYSE–2002–51) for a discussion of indicative portfolio value in the context of an exchange-traded fund. The Trust's Web site is expected to indicate that the intraday indicative value and euro spot prices are subject to an average delay of 5 to 10 seconds.

[19] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[20] Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 18, 2005.

or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

F. Exchange Trading Rules and Policies

The Shares are considered ''securities'' pursuant to NYSE Rule 3 and are subject to all applicable trading rules. The Exchange's surveillance procedures will be comparable to those used for investment company units currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

The Exchange has proposed to adopt new NYSE Rule 1300A (''Currency Trust Shares'') to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rules 13 (''Definitions of Orders''), 36.30 (''Communications Between Exchange and Members' Offices: Specialist Post Wires''), 98 (''Restrictions on Approved Person Associated with a Specialist's Member Organization''), 104 (''Dealings by Specialists''), 105(m) (''Specialists'' Interest in Pools, Options, and Single Stock Futures: Specialist Shall Not Be Options or Single Stock Futures Market-Maker''),[21] 460.10 (''Specialists Participating in Contests''), 1002 (''Availability of Automatic Execution Feature''), and 1005 (''Orders May Not Be Broken Into Smaller Amounts'') the Shares will be treated the same as Investment Company Units. When these Rules discuss Investment Company Units, references to the word ''index'' (or derivative or similar words) will be deemed to be references to the applicable currency spot price, and reference to the word ''security'' (or derivative or similar words) will be deemed to be references to the Currency Trust Shares. The term ''applicable non-U.S. currency'' as used in proposed NYSE Rules 1300A and 1301A, is defined as the currency held by the Trust for a particular issue of Currency Trust Shares. Proposed NYSE Rules 1300A and 1301A are intended to accommodate possible future listings of trusts based on non-U.S. currencies in addition to the euro. Any Exchange listing of an issue of Currency Trust Shares will be subject to approval of a proposed rule change by the Commission pursuant to Section 19(b)(2) of the Exchange Act [22] and Rule 19b–4 [23] thereunder.

The Exchange does not currently intend to exempt Currency Trust Shares from the Exchange's ''Market-on-Close/Limit-on-Close/Pre-Opening Price Indications'' Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

The Exchange is proposing to adopt new NYSE Rule 1301A (''Currency Trust Shares: Securities Accounts and Orders of Specialists'') to ensure that specialists handling Currency Trust Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, options, futures contracts and options thereon or any other derivative on such currency.[24] As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in euro, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[25] The Exchange will halt trading in the Shares if the Trust Web site (to which the NYSE will link) ceases to provide (1) the value of the euro updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or (2) the IIV per Share updated at least every 15 seconds.[26]

G. Surveillance

The Exchange's surveillance procedures will be comparable to those used for Investment Company Units and streetTRACKSR Gold Shares and will incorporate and rely upon existing NYSE surveillance procedures governing equities. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares and to detect violations of Exchange rules, thereby deterring manipulation.[27]

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, euro options, and euro futures through NYSE members, in connection with such members' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Specifically, the NYSE can

[21] In particular, proposed NYSE Rule 1300A provides that NYSE Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member, or approved person in such member organization or officer or employee thereof from acting as a market-maker or functioning in any capacity involving market-making responsibilities in the applicable non-U.S. currency, options, futures, or options on futures on such currency, or any other derivatives based on such currency, except as otherwise provided therein.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 240.19b–4.

[24] Proposed NYSE Rule 1301A also states that, in connection with trading the applicable non-U.S. currency, options, futures, or options on futures, or any other derivatives on such currency (including Currency Trust Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures, or options on futures, or any other derivatives on such currency. For purposes of proposed NYSE Rule 1301A, ''person associated with a member'' shall have the same meaning ascribed to it in Section 3(a)(21) of the Exchange Act.

[25] *See* NYSE Rule 80B.

[26] In the event that the Trust Web site (to which the NYSE will link) ceases to provide (1) the value of the euro updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or (2) the IIV per Share updated at least every 15 seconds, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 22, 2005.

[27] *See* Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2005.

obtain such information from the Phlx in connection with euro options trading on the Phlx and from the CME and LIFFE in connection with euro futures trading on those exchanges.[28]

H. Due Diligence

Before a member, member organization, allied member, or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to NYSE Rule 405 and must determine that the recommendation complies with all other applicable Exchange and federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction.

I. Information Memo

The Exchange will distribute an Information Memo to its members in connection with the trading in the Shares. The Information Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the indicative price of euro and IIV, dissemination information, trading information, and the applicability of suitability rules.[29] The Information Memo will also state that the number of euro required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that the Trust is required to sell deposited euro to pay the Trust's expenses, and that if done at a time when the price of the euro is relatively low, it could adversely affect the value of the Shares.[30] The Information Memo will also reference the fact that there is no regulated source of last sale information regarding euro, and that the Commission has no jurisdiction over the trading of euro. Finally, the Information Memo will also note to members their obligations regarding prospectus delivery requirements for the Shares.

IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act[31] and the rules and regulations thereunder applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange Act,[33] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments 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.

A. Surveillance

Information sharing agreements with markets trading securities underlying a derivative are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.[34] Although an information sharing agreement is not possible with the OTC euro-dollar foreign exchange market, the Commission believes that the unique liquidity and depth of the euro-dollar foreign exchange market, together with the Exchange's participation in the ISG,[35] and NYSE Rules 1300A(b) and 1301A create the basis for the NYSE to monitor for fraudulent and manipulative practices in the trading of the Shares.[36]

In particular, NYSE Rule 1301A will require that the specialist handling the Shares provide the Exchange with information relating to its trading in euro options, futures or options on futures on the euro, or any other derivatives based on the euro. The Exchange believes that these reporting and recordkeeping requirements will assist it in identifying situations potentially susceptible to manipulation. NYSE Rule 1301A(c) will also prohibit the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in euro, or options, futures or options on futures of euro, or any other derivatives based on euro (including the Shares). In addition, NYSE Rule 1300A(b) will prohibit the specialist in the Shares from being affiliated with a market maker in euro, or options, futures or options on futures on euro, or any other derivatives based on euro unless information barriers are in place that satisfy the requirements in NYSE Rule 98. The Commission believes that the NYSE can adequately surveil trading in the Shares, notwithstanding the lack of a surveillance sharing agreement with the OTC market that trades euro.

B. Dissemination of Information About the Shares

The Commission believes that sufficient venues for obtaining reliable euro price information exist so that investors in the Shares can monitor the underlying spot market in euro relative to the NAV of their Shares. There is a considerable amount of euro price and euro market information available 24 hours per day through public Web sites and professional subscription services.

In addition, the Exchange will provide a link to the Trust's Web site on the NYSE's public Web site. The Trust's Web site, which is and will be publicly accessible at no charge, will provide, among other things, the euro spot price,[37] including the bid and offer and the midpoint between the bid and offer for the euro spot price, updated every 5- to 10-seconds[38] and the daily Federal

[28] Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

[29] The Information Memo will also discuss any exemptive relief granted by the Commission from certain rules under the Exchange Act.

[30] *See* Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2005.

[31] 15 U.S.C. 78f.

[32] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] *See e.g.*, Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving proposal by the NYSE to list and trade trust shares that correspond to a fixed amount of gold) (''Gold Order'').

[35] *See supra* note 28 and accompanying text.

[36] The Commission notes that it had previously approved the listing and trading of foreign currency options, for which there is no self-regulatory organization or Commission surveillance of the underlying markets, on the basis that the magnitude of the underlying currency market militated against manipulations through inter-market trading activity. *See id.*, at 64619 (Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

[37] As noted above, the Trust Web site's euro spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*), which is not affiliated with the Sponsor, the Trust, the Depository, the Distributor, or the Exchange. *See supra* note 16.

[38] As noted above, the midpoint will be calculated by the Sponsor. *See supra* note 17.

Reserve Bank of New York Noon Buying Rate. The Commission also notes that the Trust's Web site will contain: (1) An intraday indicative value (''IIV'') per share for the Shares calculated by multiplying the indicative spot price of euro by the quantity of euro backing each Share, on a 5 to 10 second delay basis; (2) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (3) premium/discount information, calculated on a 20 minute delayed basis; (4) the NAV of the Trust as calculated each business day by the Sponsor; (5) accrued interest per Share; (6) the Basket Euro Amount; and (7) the last sale price (under symbol FXE) of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[39]

The Commission believes that the wide availability of euro price information and dissemination of information described above will facilitate transparency with respect to the proposed Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Exchange Act. Shares will trade as equity securities subject to NYSE rules including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting rules and procedures governing the trading of ICUs on the NYSE. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Memo the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares, including their prospectus delivery obligations.

D. Acceleration

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested the Commission to approve the proposal on an accelerated basis, after a 15-day comment period, to enable investors to begin trading the Shares promptly. The Commission notes that the proposed rule change was noticed for a 15-day comment period and no comments were received. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[40] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[41] that the proposed rule change (SR–NYSE–2005–65) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6830 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

[39] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[40] 15 U.S.C. 78s(b)(2).

[41] *Id.*

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52834; File No. SR–Phlx–2005–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Prohibition of Trade Shredding

November 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 707, Conduct Inconsistent with Just and Equitable Principles of Trade, to prohibit members, member organizations and persons associated with or employed by a member or member organization from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization, or person associated with or employed by a member or member organization.

The text of the proposed rule change appears below. Additions are in italics.

* * * * *

Rule 707 Conduct Inconsistent With Just and Equitable Principles of Trade

A member, member organization, or person associated with or employed by a member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade.

Commentary:

.01 No Change

.02 Without limiting the generality of Rule 707, it is conduct inconsistent with just and equitable principles of trade for any member, member organization, or person associated with or employed by a member or member organization to engage in conduct that has the intent or effect of unbundling equity securities orders for execution for the primary purpose of maximizing a monetary or in-kind amount received by the member, member organization, or person associated with or employed by a member or member organization as a result of the execution of such equity securities orders. For purposes of this section, ''monetary or in-kind amounts'' shall be defined to include commissions, gratuities, payments for or rebate of fees resulting from the entry of such equity securities orders, or any similar payments of value to the member, member organization, or person associated with or employed by a member or member organization.

* * * * *

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.

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to prohibit ''trade shredding'' which is the practice of unbundling customer orders for equity securities into multiple smaller orders for the primary purpose of maximizing payments to the member or member organization, and thereby possibly disadvantaging the customer by, for example, charging excessive fees or commissions, or failing to obtain best execution of an equity security order. Such payments may create a conflict of interest between the customer and the member or member organization. For example, as a result of the manner in which market data revenues are calculated, market centers can derive a greater share of market data revenue by increasing the number of trades that they report to the consolidated tape. At the same time, some markets have adopted a practice of sharing these increased revenues with market participants, including non-members, who send in equity securities orders. Thus, the Commission has expressed concern that an incentive exists for market participants receiving rebates to engage in distortive behavior, such as trade shredding, as a means to increase their share of market data revenues. Other economic arrangements between members or member organizations and their customers may create similar incentives to engage in similarly distortive behavior.

The Commission has requested that all U.S. self-regulatory organizations implement rule changes to inhibit the practice of trade shredding. The Phlx does not rebate revenues from tape reporting to members or non-members. Thus, there is no incentive in this area for Phlx order providers to engage in trade shredding on orders sent to the Exchange. However, a member or member organization may engage in conduct that has an impact similar to trade shredding, in that it unbundles a customer's order for the primary purpose of maximizing payments to the member or member organization at the customer's expense and to the customer's detriment.

In response to the Commission's request, the Exchange proposes to amend Rule 707 by adding Commentary .02 which prohibits all such practices. Specifically, the new Commentary to Rule 707 would prohibit any member, member organization, or person associated with or employed by a member or member organization from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment of a type described in the rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–63 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–Phlx–2005–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–63 and should be submitted on or before December 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6826 Filed 12–2–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 5 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before February 3, 2006.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief 7a Loan Policy Branch, 202–205–7530 *gail.hepler@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.sba.*

SUPPLEMENTARY INFORMATION:

Title: ''Gulf Coast Relief Financing Pilot Information Collection''.

Description of Respondents: Small Businesses devastated by Hurricanes Katrina and Rita.

Form No's: 2276–Parts ABC, 2279, 2280, 2281 and 2282.

Annual Responses: 8,000.

Annual Burden: 8,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E5–6812 Filed 12–2–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10222 and No. 10223]

Florida Disaster Number FL–00011

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1609–DR), dated October 24, 2005.

Incident: Hurricane Wilma.

Incident Period: October 23, 2005 and continuing through November 18, 2005.

Effective Date: November 3, 2005.

Physical Loan Application Deadline Date: December 23, 2005.

EIDL Loan Application Deadline Date: July 24, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated October 24, 2005, is hereby amended to establish the incident period for this disaster as beginning October 23, 2005 and continuing through November 18, 2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E5–6836 Filed 12–2–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10265]

North Carolina Disaster No. NC–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–1608–DR), dated October 7, 2005.

Incident: Hurricane Ophelia.

Incident Period: September 11, 2005 through September 17, 2005.

Effective Date: October 7, 2005.

Physical Loan Application Deadline Date: December 6, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on October 7, 2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Brunswick, Carteret, Craven, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pender.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.750
Business and Non-profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10265.

(Catalog of Federal Domestic Assistance Number 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E5–6837 Filed 12–2–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10267]

Northern Mariana Islands Disaster No. MP–00001

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of the Northern Mariana Islands (FEMA–1611–DR), dated November 8, 2005.

Incident: Typhoon Nabi.

Incident Period: August 30, 2005 through September 1, 2005.

Effective Date: November 8, 2005.

Physical Loan Application Deadline Date: January 9, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on November 8, 2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following islands have been determined to be adversely affected by the disaster:

Rota, Saipan, Tinian.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10267.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E5–6834 Filed 12–2–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10264]

Puerto Rico Disaster No. PR–00002

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–1613–DR), dated November 10, 2005.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: October 9, 2005 through October 15, 2005.

Effective Date: November 10, 2005.

Physical Loan Application Deadline Date: January 9, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on November 10, 2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities:

Aibonito, Juana Diaz, Lares, Maricao, Penuelas, Ponce, Salinas, Santa Isabel, Utuado, Villalba, Yabucoa, Yauco.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10264.

(Catalog of Federal Domestic Assistance Number 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E5–6838 Filed 12–2–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10262 and No. 10263]

Tennessee Disaster No. TN–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated November 29, 2005.

Incident: Severe Storms and Tornadoes.

Incident Period: November 15, 2005.

Effective Date: November 29, 2005.

Physical Loan Application Deadline Date: January 30, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: August 28, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road Fort, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Henry, Montgomery.

Contiguous Counties:

Kentucky: Calloway, Christian, Graves, Todd.

Tennessee: Benton, Carroll, Cheatham, Dickson, Houston, Robertson, Stewart, Weakley.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.687
Businesses with Credit Available Elsewhere	6.557
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10262 C and for economic injury is 10263 0.

The States which received an EIDL Declaration ı are Tennessee, Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 29, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. E5–6835 Filed 12–2–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service: Performance Review Board Members

AGENCY: Small Business Administration.

ACTION: Notice of members for the FY 05 Performance Review Board.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C.; requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Board (PRB). The following individuals have been designated to serve on the FY

05 Performance Review Board for the U.S. Small Business Administration:

1. Raul Cisneros, Associate Administrator for Communications and Public Liaison;

2. Thomas A. Dumaresq, Chief Financial Officer;

3. Delorice P. Ford, Assistant Administrator for the Office of Hearings and Appeals;

4. Karen Hontz, Associate Administrator for Government Contracting;

5. Cheryl A. Mills, Associate Deputy Administrator for Entrepreneurial Development;

6. Janet A. Tasker, Deputy Associate Deputy Administrator for Capital Access; and

7. C. Edward Rowe, III, Associate Administrator for Congressional and Legislative Affairs.

Dated: November 30, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. E5–6839 Filed 12–2–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Pease International Tradeport, Portsmouth, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the Pease Development Authority's request to sell a portion (11.57 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located at 40 Oak Avenue, Portsmouth, New Hampshire and is currently used for revenue production. Upon disposition the property will be used for construction of a Federal building by the General Services Administration. The property was acquired under the Surplus Property Act under a Deed from the United States Air Force dated January 28, 2004.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before January 4, 2006.

ADDRESSES: Documents are available for review by appointment by contacting Ms. Lynn Hinchee, General Counsel, Pease Development Authority, at 360 Corporate Drive, Portsmouth, New Hampshire 03801, Telephone 603–766–9286 and by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts, on November 21, 2005.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 05–23632 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Air Carriers Listing of Leading Outsource Maintenance Providers

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 data from this report will be used to assist the principal maintenance or avionics inspector in preparing the annual FAA surveillance requirements of the leading contract maintenance providers to the air operators.

DATES: Please submit comments by February 3, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895, or by e-mail at: *Judy.Street@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Air Carriers Listing of Leading Outsource Maintenance Providers.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0708.

Form(s): Quarterly Outsource Maintenance Providers Utilization Report.

Affected Public: A total of 121 Respondents.

Frequency: The information is collected quarterly.

Estimated Average Burden Per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 484 hours annually (This is an increase over the previous estimate for this collection. We have revised the time estimated to complete the form).

Abstract: The data from this report will be used to assist the principal maintenance or avionics inspector in preparing the annual FAA surveillance requirements of the leading contract maintenance providers to the air operators.

ADDRESSES: Send comments to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, ABA–20, 800 Independence Ave., SW., Washington, DC 20591.

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 28, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–23635 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflight Advisory Group Aviation Rulemaking Committee

ACTION: Notice; correction.

SUMMARY: This document makes a correction to the notice published in the **Federal Register** announcing an opening on the National Parks Overflight Advisory Group Aviation Rulemaking Committee representing Indian Tribal interests. In that notice, there was no closing date included for nominations. This notice corrects that oversight.

Effective Date: This correction is effective on December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Manager, Executive Resource Staff, Western Pacific Region, telephone: (310) 725–3800.

Correction

In the notice FR Doc. 05–17385 published on September 1, 2005 (70 FR 52152), make the following correction:

1. On page 52153, in column 2, fifth line from the top of the page, correct the sentence ''Requests to serve on the NPOAG ARC should be made in writing and postmarked on or before.'' to read ''Requests to serve on the NPOAG ARC should be made in writing and postmarked on or before December 9, 2005.''

Issued in Washington, DC on November 29, 2005.

Tony Fazio,

Director, Office of Rulemaking.

[FR Doc. E5–6797 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Supplemental Environmental Assessment for the Proposed Modification to the Four Corner-Post Plan at Las Vegas McCarran International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability, notice of comment period, notice of public workshops.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice of Availability to advise the public that a Draft Supplemental Environmental Assessment (DSEA) will be available for public review beginning November 22, 2005. The DSEA details the proposed modification to the Four Corner-Post Plan at Las Vegas McCarran International Airport and addresses the potential environmental impacts associated with its implementation. The DSEA presents the Purpose and Need for the proposed project, a comprehensive analysis of the alternatives to the proposed project, and studies the potential environmental impacts associated with the proposed modification to the Four Corner-Post Plan.

The Federal Aviation Administration (FAA) proposes to modify an existing departure procedure that was implemented as part of the Four Corner-Post Plan at McCarran International Airport (LAS), Las Vegas, Nevada, in October 2001. The Four Corner-Post Plan was developed and implemented to address growing airspace and air traffic control inefficiencies caused by increases in air traffic in the Las Vegas TRACON airspace. This Draft Supplemental Environmental Assessment (SEA) has been developed to assess the potential environmental impacts that may be associated with the proposed modification of the STAAV Area Navigation (RNAV) Standard Instrument Departure (SID) to accommodate eastbound departures from Runway 25.

Public Comment Period and Public Workshops: The public comment period on the DSEA will start November 22, 2005 and will end on December 30, 2005. Public Workshops will be held on December 12, 2005 from 6–9 p.m. at Sierra Vista High School, 8100 W. Robindale Road, Las Vegas, NV and on December 13, 2005 from 6–9 p.m. at Centennial High School, 10200 Centennial Parkway, Las Vegas, NV. The public will be afforded the opportunity to present oral testimony and/or written testimony pertinent to the subject of the workshops. Forms for providing written comments will be available and a court reporter will be available to record oral comments at the Public Workshops.

All written comments are to be submitted to Ms. Sara Hassert, Landrum & Brown, Inc., 8755 W. Higgins Rd., Ste. 850, Chicago, IL 60631, fax: 773–638–2901, e-mail: *shassert@landrum-brown.com* and the comments must be postmarked and email/fax must be sent by no later than midnight, December 30, 2005.

The DSEA may be reviewed for comment during regular business hours until December 30, 2005 at the following locations:

1. Nevada State Library and Archives, 100 Stewart St., Las Vegas, NV 89710.

2. Las Vegas Branch Library, 509 S. 9th St., Las Vegas, NV 89101–7010.

3. Las Vegas Library, 833 Las Vegas Blvd. N, Las Vegas, NV 89101–2004.

4. Meadows Library, 300 W. Boston Ave, Las Vegas, NV 89102.

5. Rainbow Library, 3150 N. Buffalo Dr., Las Vegas, NV 89128–2823.

6. Sahara West Library, 9600 W. Sahara Ave., Las Vegas, NV 89117–5959.

7. Spring Valley Library, 4280 S. Jones Blvd., Las Vegas, NV 89103–3325.

8. Summerlin Library, 1771 Inner Circle, Las Vegas, NV 89134–6119.

9. Sunrise Library, 5400 Harris Ave., Las Vegas, NV 89110–2543.

10. West Charleston Library, 6301 W. Charleston Blvd., Las Vegas, NV 89146–1124.

11. West Las Vegas Library, 951 W. Lake Mead Blvd., Las Vegas, NV 89106–2315.

12. Whitney Library, 5175 E. Tropicana Ave., Las Vegas, NV 89122–6742.

An electronic copy of the DSEA is also available on the Internet and can be accessed at *http://www.awp.faa.gov/atenviro* (click on Current Environmental Studies to select and view the document).

FOR FURTHER INFORMATION CONTACT:

Ms. Kathryn Higgins, Environmental Specialist, Western Terminal Service Area Office, FAA Western Terminal Operations, 15000 Aviation Blvd., Lawndale, CA 90261, Ph. 310–725–6597, e-mail: *kathryn.higgins@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft SEA. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives. Reviewers should organize their participation so that it is meaningful and makes the agencies aware of the viewer's interests and concerns using quotations and other specific references to the text of the Draft SEA. Matters that could have been raised with specificity during the Draft SEA comment period may not be considered if they are raised later in the decision making process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

Issued in Lawndale, California, on November 22, 2005.

Anthony DiBernardo,

Manager, Program Operations, FAA Western Terminal Operations.

[FR Doc. 05–23636 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–62]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, John Linsenmeyer (202) 267–5174 or Shanna Harvey (202) 493–4657, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 25, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2003–14987.
Petitioner: Island Air, Inc. d.b.a. Island Air.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow Island Air, Inc., d.b.a. Island Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 09/29/2005, Exemption No. 8070A.

Docket No.: FAA–2001–10165.
Petitioner: The North Jersey Chapter of the Ninety-Nines, Inc.
Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353 and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To allow the North Jersey Chapter of the Ninety-Nines, Inc., to conduct local sightseeing flights at the Blairstown Airport, Blairstown, New Jersey, on October 1 and 2, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 09/27/2005, Exemption No. 8641.

Docket No.: FAA–2005–22532.
Petitioner: Call Air.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow Call Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 09/22/2005, Exemption No. 8638.

Docket No.: FAA–2003–16435.
Petitioner: Quest Aviation, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143 (c)(2).
Description of Relief Sought/ Disposition: To allow Quest Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 09/22/2005, Exemption No. 8172A.

Docket No.: FAA–2002–14094.
Petitioner: Rogerson ATS.
Sections of 14 CFR Affected: 14 CFR § SFAR No. 88 of Title 14.
Description of Relief Sought/ Disposition: To allow Rogerson ATS to substantially meet the intent of SFAR No. 88 without conducting a safety review of the airplane fuel tank system, as required by SFAR No. 88.
Partial Grant, 09/16/2005, Exemption No. 8619.

Docket No.: FAA–2004–19861.
Petitioner: Embraer Empresa Brasileira Aeronautica S.A.
Sections of 14 CFR Affected: 14 CFR 25.901(c).
Description of Relief Sought/ Disposition: To allow type certification of certain Embraer Model ERJ 190 airplanes when those airplanes do not meet the ''no single failure'' criterion of § 25.901(c) of Title 14, Code of Federal Regulations (14CFR), as it relates to ''uncontrollable high thrust failure conditions.''
Partial Grant, 08/25/2005, Exemption No. 8613.

Docket No.: FAA–2003–16532.
Petitioner: Avigate Air.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow Avigate Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 09/19/2005, Exemption No. 8179A.

Docket No.: FAA–2005–22220.
Petitioner: AVMC, Inc. d.b.a WT Air.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow AVMC, Inc., d.b.a. WT Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 09/19/2005, Exemption No. 8637.

Docket No.: FAA–2003–16412.
Petitioner: Richland Aviation.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow Richland Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.
Grant, 09/19/2005, Exemption No. 8169A.

Docket No.: FAA–2003–16344.
Petitioner: Sky Care.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow Sky Care to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.
Grant, 09/19/2005, Exemption No. 8165A.

Docket No.: FAA–2005–22227.
Petitioner: Ameristar Air Cargo, Inc.
Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To allow Ameristar Air Cargo, Inc., to substitute a qualified pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training.
Grant, 09/15/2005, Exemption No. 8636.

Docket No.: FAA–2005–22192.
Petitioner: Amerijet International, Inc.
Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To allow Ameristar Air Cargo, Inc., to substitute a qualified pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training.
Grant, 09/15/2005, Exemption No. 8635.

Docket No.: FAA–2001–11025.
Petitioner: Miller Aviation.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To allow Miller Aviation to

operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 09/15/2005, Exemption No. 7663B.

Docket No.: FAA–2005–22333.

Petitioner: Yukon Air Service, Inc.

Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To allow Yukon Air Service, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 09/15/2005, Exemption No. 8634.

Docket No.: FAA–2005–22239.

Petitioner: Mauiscape Helicopters, Inc.

Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To allow Mauiscape Helicopters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 09/15/2005, Exemption No. 8633.

Docket No.: FAA–2002–13316.

Petitioner: Monterey Bay Ninety-Nines.

Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353.

Description of Relief Sought/ Disposition: To allow the Monterey Bay Ninety-Nines to conduct local sightseeing flights at the Watsonville Municipal Airport, Watsonville, California, on October 29, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 09/14/2005, Exemption No. 8632.

Docket No.: FAA–2004–17410.

Petitioner: Stuart Air Show.

Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353.

Description of Relief Sought/ Disposition: To allow Stuart Air Show to conduct local sightseeing flights at the Martin County Airport, Stuart, Florida, for the Stuart Air Show on or about November 12 and 13, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 09/14/2005, Exemption No. 8631.

Docket No.: FAA–2002–12010.

Petitioner: Taunton Airport Association, Inc.

Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353.

Description of Relief Sought/ Disposition: To allow Taunton Airport Association, Inc., to conduct local sightseeing flights to benefit local charities at the Taunton Municipal Airport, East Taunton, Massachusetts, on October 22, 2005, with a rain date of October 23, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/14/2005, Exemption No. 8630.

Docket No.: FAA–2001–10289.

Petitioner: EVA Airways Corporation.

Sections of 14 CFR Affected: 14 CFR 61.77(a) and (b) and 63.23(a).

Description of Relief Sought/ Disposition: To allow the issuance of U.S. special purpose pilot authorizations and U.S. special purpose flight engineer certificated to airmen employed by EVA Airways Corporation without those airmen meeting the requirement to hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation.

Grant, 09/09/2005, Exemption No. 6689E.

Docket No.: FAA–2001–10223.

Petitioner: Kapowsin Air Sports, Ltd.

Sections of 14 CFR Affected: 14 CFR 105.29.

Description of Relief Sought/ Disposition: To allow Kapowsin Air Sports, Ltd., to conduct parachute operations within a 2-mile radius of Kapowsin Field when published cloud clearances cannot be maintained.

Denial, 09/06/2005, Exemption No. 8627.

Docket No.: FAA–2005–22231.

Petitioner: Save-A-Connie, Inc.

Sections of 14 CFR Affected: 14 CFR 91.315.

Description of Relief Sought/ Disposition: To allow Save-A-Connie, Inc., to carry its members and sponsors on local demonstration or promotional flights for compensation or hire in its Lockheed L–1049 Super Constellation and Martin 4–0–4 airplanes.

Denial, 09/06/2005, Exemption No. 8628.

Docket No.: FAA–2001–9142.

Petitioner: Honeywell Aerospace.

Sections of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To allow Honeywell Aerospace to issue export airworthiness approval tags for class II and class III products manufactured at Honeywell's Singapore facility.

Grant, 09/01/2005, Exemption No. 7075D.

[FR Doc. E5–6798 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft, Trip-Free Single Phase 115 VAC, 400 Hz Arc Fault Circuit Breakers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comment on proposed Technical Standard Order (TSO) C–178, Aircraft, Trip-Free Single Phase 115 VAC, 400 Hz Arc Fault Circuit Breakers. This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their arc fault circuit breakers must meet to be identified with the appropriate TSO marking.

DATES: Comments must be received on or before January 4, 2006.

ADDRESSES: Send all comments on this proposed TSO to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch (AIR–130), 800 Independence Avenue, SW., Washington, DC 20591. Attn: Ms. Charisse Green. Or, you may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Charisse Green, AIR–130, Room 815, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 385–4637, fax (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in room 815 at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final TSO.

Background

The proposed TSO–C178 provides a minimum operating standard for Trip-

Free Single Phase 115 VAC, 400 Hz circuit breakers, which provides an equivalent level of thermal protection to existing thermal circuit breakers, with the added ability of detection and reaction to arc fault conditions, thus diminishing damage to the wiring system caused by prolonged arcing events. The Arc Fault Circuit Breaker thereby diminishes damage to the aircraft wiring from the circuit breaker to the first serial load element, which reduces the potential of igniting surrounding material.

How To Obtain Copies

You can view or download the proposed TSO from its online location at: *www.airweb.faa.gov/rgl*. At this Web page, select ''Technical Standard Orders.'' At the TSO page, select ''Proposed TSOs.'' For a paper copy, contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Note, SAE International documents are copyrighted and may not be reproduced without the written consent of SAE International. You may purchase copies of SAE International documents from: SAE International, 400 Commonwealth Drive, Warrendale, PA 15096–0001, or directly from their Web site: *http://www.sae.org/*.

Issued in Washington, DC, on November 28, 2005.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–23631 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2005–22932]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

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 from 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 reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 3, 2006.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., Plaza 401, Washington, DC 20590. Docket No. NHTSA–2005–22932.

FOR FURTHER INFORMATION CONTACT: John Siegler, PhD., Contracting Officer's Technical Representative, Office of Research and Technology (NTI–132), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5119, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must 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 regulations (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; and

(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, and or other technological collection techniques or other forms of information technology. *e.g.,* permitting electronic submissions of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Evaluation Surveys for Impaired Driving and Safety Belt Interventions

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—3 years from date of approval.

Summary of the Collection of Information—The National Highway Traffic Safety Administration (NHTSA) proposes to conduct telephone surveys to evaluate interventions designed to increase safety belt use and reduce impaired driving. Sample sizes would range from 200 to 2000 depending on the geographic unit being surveyed (Nation, Region, State, Community) and the evaluation design for the intervention (*e.g.*, number of analytic groups). Interview length would be 10 minutes. The surveys would collect information on attitudes, awareness, knowledge, and behavior related to the intervention. The surveys would follow a pre-post design where they are administered prior to the implementation of the intervention and after its conclusion. Interim survey waves may also be administered if the duration of the intervention permits.

In conducting the proposed surveys, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish Language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed surveys would be anonymous and confidential.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

The heavy toll that impaired driving exacts on the Nation in fatalities, injuries, and economic costs is well documented. Strong documentation also exists to show that wearing a safety belt is one of the most important actions a person can take to prevent injury or fatality in the event of a crash, but a significant proportion of the population still does not wear them. The persistence of these traffic safety problems points to a continuing need for effective interventions to address impaired driving and non-use of safety belts. This in turn calls for strong evaluation efforts to identify what interventions are effective. This includes monitoring key interventions that have been shown to be effective in order to determine whether they are

retaining their potency, as well as identifying new or refined interventions that may influence parts of the population that have been resistant to previous measures.

Over the next few years, a number of legislative and programmatic changes will require NHTSA to collect public awareness information about its programs. With the introduction of SAFETEA–LU, section 157 grants (TEA–21) will no longer be available to fund States' occupant protection programs. As a result, States will have to sustain their own high enforcement efforts to increase belt use. Public Awareness surveys will be needed to determine if States are successful in sustaining their programs without NHTSA support.

Under section 410 of SAFETEA–LU, spending for State enforcement grants for impaired driving programs will increase almost 100 million dollars annually, from 39.6 million in 2005 to $139 million in 2009. States seeking to access these grants for specific impaired driving activities will need to have implemented a number of programs in order to be eligible for these grants including: statewide checkpoints and/or saturation patrols, prosecution/adjudication outreach, increased BAC testing of drivers in fatal crashes, high BAC law (stronger/additional penalties), effective alcohol rehabilitation and/or DWI courts, under age 21 program, administrative license revocation or suspension, and self-sustaining programs. It is expected that such heightened activity will increase drivers' awareness of these programs and reduce incidents of impaired driving. Public awareness surveys would enable NHTSA to evaluate the effectiveness of this increased spending.

Between 2006 and 2009, SAFETEA–LU has authorized NHTSA to spend $29 million annually on National media to promote a message of high visibility enforcement for both impaired driving and occupant protection programs. This, coupled with proposed changes in the media message for the impaired driving program, requires NHTSA to examine public awareness of programs to determine whether the media messages are reaching the target audience.

In order to reduce the work requirements for each State and to create sets of survey data that may be compared among the States, NHTSA will grant one or more separate awards to survey firms with expertise in conducting random telephone surveys. The data will be used to properly plan and evaluate enforcement activities directed at reducing the occurrence of alcohol impaired driving and increasing the use of safety belts. Data from National surveys will be used to assess the overall effectiveness of these programs, while State data will assess effectiveness of individual State programs. States found to have implemented effective programs to reduce their impaired driving problem, and increased their safety belt use, will prepare materials that highlight major features of their programs to be disseminated among States that want to implement an improved alcohol enforcement program or occupant protection enforcement program.

It should be noted that during the past decade NHTSA has conducted surveys on attitudes and behaviors on impaired driving and safety belt use. These surveys were very useful in convincing States and communities to adopt more effective programs that have raised safety belt use rates to record levels and initiated a new downward trend in impaired driving. Most of these surveys were conducted years ago and cannot be used to evaluate new programs scheduled to be initiated in the next few years.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Over the next 3 years, NHTSA intends to conduct National telephone surveys to collect data from a total of 21,600 participants. For the impaired driving programs, 2 sets of pre/post intervention surveys, each with sample sizes of 1200, will be administered annually for 3 years. For the Occupant Protection programs, 1 set of pre/post intervention surveys, each with sample sizes of 1200, will be administered annually for 3 years. NHTSA may also select certain sub-groups to survey, including State, Regional, and Community telephone surveys to monitor and evaluate occupant protection and impaired driving demonstration projects. Typically, a State demonstration survey will require 500 participants. A regional demonstration survey can range from as few as 200 participants for a small county to 2000 participants for a region covering more than one State.

Interviews will be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household will be selected, and each sample member will complete just one interview. Businesses are ineligible for the sample and would not be interviewed. After each wave is completed and the data analyzed, the findings will be disseminated to each State for review.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information—NHTSA estimates that respondents in the sample would require an average of 10 minutes to complete the telephone interviews. Thus, the number of annual estimated reporting burden on the general public would be 1,200 hours for the National surveys and a maximum of 2,800 hours for the State and regional demonstration surveys, or a maximum of 4,000 hours per year for the combined National, State, and regional surveys. The respondents would not incur any reporting or recordkeeping costs from the information collection.

Authority: 44 U.S.C. section 3506(c)(2)(A).

Issued on: November 22, 2005.

Marilena Amoni,

Associate Administrator of Program Development and Delivery.

[FR Doc. 05–23597 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23022]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

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 from 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 February 3, 2006.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2005–23022] by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mary Versailles, NHTSA, 400 Seventh Street, SW., Room 5320, Washington, DC 20590. Ms. Versailles' telephone number is (202) 366–2057. Please identify the relevant collection of information by referring to its OMB Control Number.

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 for which the agency is seeking approval from OMB:

Title: 49 CFR 575—Consumer Information Regulations (sections 103 and 105).

OMB Control Number: 2127–0049.

Form Number: None.

Affected Public: Motor vehicle manufacturers of light trucks and utility vehicles.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR part 575, Consumer Information Regulation § 575.103 Truck-camper Loading and § 575.105 Utility Vehicles. Section 575.103, requires that manufacturers of light trucks that are capable of accommodating slide-in campers provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. Section 575.105, requires that manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Estimated Annual Burden: 300 hours.

Number of Respondents: 15.

Based on prior years' manufacturer submissions, the agency estimates that 15 responses will be submitted annually. Currently 12 light truck manufacturers comply with 49 CFR part 575. These manufacturers file one response annually and submit an additional response when they introduce a new model. Changes are rarely filed with the agency, but we estimate that three manufacturers will alter their information because of model changes. The light truck manufacturers gather only pre-existing data for the purposes of this regulation. Based on previous years' manufacturer information, the agency estimates that light truck manufacturers use a total of 20 hours to gather and arrange the data in its proper format (9 hours), to distribute the information to its dealerships and attach labels to light trucks that are capable of accommodating slide-in campers (4 hours), and to print the labels and utility vehicle information in the owner's manual or a separate document included with the owner's manual (7 hours). The estimated annual burden hour is 300 hours. This number reflects the total responses (15) times the total hours (20). Prior years' manufacturer information indicates that it takes an average of $35.00 per hour for professional and clerical staff to gather data, distribute and print material. Therefore, the agency estimates that the cost associated with the burden hours is $10,500 ($35.00 per hour × 300 burden hours).

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 on: November 28, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E5–6790 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–05–21436]

Highway Safety Programs; Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice amends and updates the list of devices that conform to the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Research and Technology, Behavioral Research Division (NTI–131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On August 2, 1994, NHTSA published Model

Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (59 FR 39382). These specifications established performance criteria and methods for testing alcohol screening devices to measure alcohol content. The specifications support State laws that target youthful offenders (*e.g.*, ''zero tolerance'' laws) and the Department of Transportation's workplace alcohol testing program. NHTSA published its first Conforming Products List (CPL) for screening devices on December 2, 1994 (59 FR 61923, with corrections on December 16, 1994 in 59 FR 65128), identifying the devices that meet NHTSA's Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids. Five (5) devices appeared on that first list. Thereafter, NHTSA amended the CPL on August 15, 1995 (60 FR 42214) and on May 4, 2001 (66 FR 22639), adding seven (7) devices to the CPL in those two (2) actions.

On September 19, 2005, NHTSA published an updated CPL (70 FR 54972), adding several devices to the list and removing several other devices. Since that publication of the CPL, NHTSA discovered an error regarding the name of the device listed on the CPL for the manufacturer Varian, Inc. This Notice serves to correct the error by republishing the CPL in its entirety with the accurate name of the device.

The Notice published on September 19, 2005 explained that Varian, Inc. of Lake Forest, California acquired the ''On-Site Alcohol'' saliva-alcohol screening device previously owned by Roche Diagnostics Systems. Varian, Inc. certified that the ''On-Site Alcohol'' device it sells is identical to the device previously sold by Roche. The Roche Diagnostics device was removed from the CPL because none of the Roche devices exist in the marketplace. However, NHTSA intended to list on the CPL the Varian, Inc. ''On-Site Alcohol'' saliva-alcohol screening device but instead listed the ''Q.E.D. A150 Saliva Alcohol Test.'' Accordingly, NHTSA amends the CPL to correct this error. The CPL is reprinted in its entirety below.

CONFORMING PRODUCTS LIST OF ALCOHOL SCREENING DEVICES

Manufacturer	Device(s)
AK Solutions, Inc., Palisades Park, NJ [1]	Alcoscan AL–2500, AlcoChecker, AlcoKey, AlcoMate, AlcoMate Pro, Alcoscan AL–5000, Alcoscan AL–6000.
Alco Check International, Hudsonville, MI	Alco Check 3000 D.O.T., Alco Check 9000.
Chematics, Inc., North Webster, IN	ALCO–SCREEN 02™ [2]
Guth Laboratories, Inc., Harrisburg, PA	Alco Tector Mark X, Mark X Alcohol Checker, Alcotector WAT89EC–1.
Han International Co., Ltd., Seoul, Korea [3]	A.B.I. (Alcohol Breath Indicator).
OraSure Technologies, Inc., Bethlehem, PA	Q.E.D. A150 Saliva Alcohol Test.
PAS Systems International, Inc., Fredericksburg, VA	PAS Vr.
Q3 Innovations, Inc., Independence, IA [4]	Alcohawk® Precision, Alcohawk® Elite, Alcohawk® ABI, Alcohawk® PRO.
Repco Marketing, Inc., Raleigh, NC	Alco Tec III.
Seju Co. of Taejeon, Korea	Safe-Slim.
Sound Off, Inc., Hudsonville, MI	Digitox D.O.T.
Varian, Inc., Lake Forest, CA	On-Site Alcohol [5]

[1] The AlcoMate was manufactured by Han International of Seoul, Korea, but marketed and sold in the U.S. by AK Solutions.

[2] While the ALCO–SCREEN 02™ saliva-alcohol screening device manufactured by Chematics, Inc. passed the requirements of the Model Specifications when tested at 40 °C (104 °F), the manufacturer has indicated that the device cannot exceed storage temperatures of 27 °C (80 °F). Instructions to this effect are stated on all packaging accompanying the device. Accordingly, the device should not be stored at temperatures above 27 °C (80 °F). If the device is stored at or below 27 °C (80 °F) and used at higher temperatures (*i.e.*, within a minute), the device meets the Model Specifications and the results persist for 10–15 minutes. If the device is stored at or below 27 °C (80 °F) and equilibrated at 40 °C (104 °F) for an hour prior to sample application, the device fails to meet the Model Specifications. Storage at temperatures above 27 °C (80 °F), for even brief periods of time, may result in false negative readings.

[3] Han International does not market or sell devices directly in the U.S. market. Other devices manufactured by Han International are listed under AK Solutions, Inc. and Q–3 Innovations, Inc.

[4] The AlcoHawk ABI is the same device as that listed under Han International as the ''ABI'' and is manufactured for Q–3 Innovations by Han International. The Alcohawk PRO is the same device as the AlcoMate marketed and sold by AK Solutions, and also manufactured by Han International.

[5] While this device passed all of the requirements of the Model Specifications, readings should be taken only after the time specified by the manufacturer. For valid readings, the user should follow the manufacturer's instructions. Readings should be taken one (1) minute after a sample is introduced at or above 30 °C (86 °F); readings should be taken after two (2) minutes at 18 °C–29 °C (64.4 °F–84.2 °F); and readings should be taken after five (5) minutes when testing at temperatures at or below 17 °C (62.6 °F). If the reading is taken before five (5) minutes has elapsed under the cold conditions, the user is likely to obtain a reading that underestimates the actual saliva-alcohol level.

The devices manufactured by Chematics, Inc., OraSure Technologies, Inc., and Varian, Inc. are all single-use, disposable saliva alcohol test devices. All of the other devices listed on the CPL are electronic breath testers. The device called the ''Alcotector WAT89EC–1'' manufacturered by Guth Laboratories, Inc. and the PAS Vr device manufactured by PAS Systems International, Inc. use fuel-cell sensors, whereas all other electronic devices listed on the CPL use semi-conductor sensors.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. E5–6848 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified applications.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''
1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes
N—New application
M—Modification request
X—Renewal
PM—Party to application with modification request

Issued in Washington, DC, on November 29, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Safety Speceial Permits & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
NEW SPECIAL PERMIT APPLICATIONS			
13281–N	The Dow Chemical Company, Midland, MI	4	01–31–2006
13266–N	Luxfer Gas Cylinders, Riverside, CA	4	01–31–2006
13309–N	OPW Engineered Systems, Lebanon, OH	4	01–31–2006
13341–N	National Propane Gas Association, Washington, DC	3	01–31–2006
13347–N	ShipMate, Inc., Torrance, CA	4	01–31–2006
13302–N	FIBA Technologies, Inc., Westboro, MA	4	01–31–2006
13314–N	Sunoco Inc., Philadelphia, PA	4	01–31–2006
13346–N	Stand-By-Systems, Inc., Dallas, TX	1	01–31–2006
13547–N	CP Industries, McKeesport, PA	4	01–31–2006
14175–N	Air Products & Chemicals, Inc., Allentown, PA	4	01–31–2006
14167–N	Trinityrail, Dallas, TX	4	01–31–2006
14163–N	Air Liquide America L.P., Houston, TX	4	01–31–2006
14162–N	BSCO Incorporated, Forest Hills, MD	4	01–31–2006
14151–N	ChevronTexaco, Houston, TX	4	01–31–2006
14141–N	Nalco Company, Naperville, IL	4	01–31–2006
14138–N	INO Therapeutics, Inc., Port Allen, LA	4	01–31–2006
14038–N	Dow Chemical Company, Midland, MI	1	01–31–2006
13999–N	Kompozit-Praha s.r.o., Dysina u Plzne, Czech Republic, CZ	4	01–31–2006
14218–N	Air Logistics of Alaska, Inc., Fairbanks, AK	4	01–31–2006
14205–N	The Clorox Company, Pleasanton, CA	4	02–28–2006
14197–N	GATX Rail Corporation, Chicago, IL	4	02–28–2006
14199–N	RACCA, Plymouth, MA	4	02–28–2006
14190–N	Cordis Corporation, Miami Lakes, FL	4	01–31–2006
14189–N	PPG Industries, Inc., Pittsburgh, PA	4	01–31–2006
14185–N	U.S. Department of Energy, Washington, DC	4	01–31–2006
14184–N	Global Refrigerants, Inc., Denver, CO	4	01–31–2006
14178–N	Brider Fire Inc., Bozeman, MT	4	01–31–2006
13957–N	T.L.C.C.I., Inc., Franklin, TN	4	12–31–2005
13582–N	Linde Gas LLC (Linde), Independence, OH	4	01–31–2006
13563–N	Applied Companies, Valencia, CA	4	01–31–2006
MODIFICATION TO SPECIAL PERMITS			
7277–M	Structural Composites Industries, Pomona, CA	4	12–31–2005
10019–M	Structural Composites Industries, Pomona, CA	4	12–31–2005
10878–M	Tankcon FRP Inc., Boisbriand, Qc	1, 3	12–31–2005
11241–M	Rohm and Haas Co., Philadelphia, PA	1	12–31–2005
12284–M	The American Traffic Safety Services Assn. (ATSSA), Fredericksburg, VA	1	12–31–2005
11321–M	E.I. Du Pont, Wilmington, DE	4	12–31–2005
12412–M	Los Angeles Chemical Company, South Gate, CA	4	01–31–2006
12412–M	Hawkins, Inc., Minneapolis, MN	3, 4	01–31–2006
11903–M	Comptank Corporation, Bothwell, ON	4	12–31–2005
13229–M	Matheson Tri-Gas, East Rutherford, NJ	4	12–31–2005
9659–M	Kaiser Compositek Inc., Brea, CA	4	12–31–2005
13327–M	Hawk FRP LLC, Ardmore, OK	1	12–31–2005
13488–M	FABER INDUSTRIES SPA (U.S. Agent: Kaplan Industries, Maple Shade, NJ)	4	12–31–2005
10319–M	Amtrol, Inc., West Warwick, RI	4	12–31–2005
6263–M	Amtrol, Inc., West Warwick, RI	4	12–31–2005
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12–31–2005
10915–M	Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA	1	12–31–2005
7280–M	Department of Defense, Ft. Eustis, VA	4	12–31–2005
8162–M	Structural Composites Industries, Pomona, CA	4	12–31–2005
8718–M	Structural Composites Industries, Pomona, CA	4	12–31–2005

Application No.	Applicant	Reason for delay	Estimated date of completion
RENEWAL TO SPECIAL PERMITS			
9649–X	U.S. Department of Defense, Fort Eustis, VA	1	12–31–2005

[FR Doc. 05–23638 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–04–19914; Grant 2]

Pipeline Safety: Grant of Waiver; Enstar Natural Gas Company

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; grant of waiver.

SUMMARY: Enstar Natural Gas Company (Enstar) petitioned PHMSA for a waiver of the pipeline safety regulation that prohibits tracer wire from being wrapped around the pipe.

SUPPLEMENTARY INFORMATION:

The pipeline safety regulation at 49 CFR 192.321(e), *Installation of plastic pipe*, requires plastic pipe that is not encased to have an electric conducting wire or other means of locating the pipe while it is underground. Tracer wire may not be wrapped around the pipe and contact with the pipe must be minimized but is not prohibited. Tracer wire or other metallic elements installed for pipe locating purposes must be resistant to corrosion damage, either by use of coated copper wire or by other means. Enstar requested a waiver from § 192.321(e) because it is uncommon for lightning strikes to occur in the service area of its pipeline. Enstar contends wrapping tracer wire around its plastic pipe allows utilities to be accurately located and thus reduces the risk of third-party damage to its pipeline.

In support of its waiver request, Enstar provided information from the Bureau of Land Management (BLM) who is responsible for tracking lightning strike occurrences and monitoring forest fire activity. BLM determined that lightning strikes are most frequent north and west of the Alaska Range. Accordingly, BLM installed lightning detection systems with electrical sensors at nine stations in Alaska where lightning strikes are most common. BLM did not install electrical sensors to the south and east of the Alaska Range where Enstar facilities are located, because it determined lightning strikes are uncommon in those areas.

Enstar's service area is located in south central Alaska. Because of the unique geographical and climatic conditions of Enstar's pipeline, Enstar has been able to demonstrate that in 32 years, it has recorded only one confirmed pipeline incident due to lightning strikes.

On April 6, 2005, PHMSA published a notice in **Federal Register** seeking public comment on Enstar's waiver request (70 FR 17509); no comments were received.

Grant of Waiver

Based on the information presented by Enstar showing that lightning strikes are rare in the service area of its pipeline, PHMSA finds that granting this waiver request is not inconsistent with pipeline safety. Therefore, Enstar's request for waiver from the regulatory requirements of § 192.321(e) is granted. If, however, PHMSA determines the terms of this waiver are no longer appropriate or the overall effect of the waiver is inconsistent with pipeline safety, PHMSA may revoke this waiver and require Enstar to comply with the regulatory requirements of § 192.321(e).

This waiver is granted on the condition that Enstar:

- Apply this waiver only to its pipeline facilities located south of the Alaska Range in the state of Alaska;
- Protect its pipelines from ground faults—in particular, those pipelines that may be located in an electric power corridor; and
- Place tracer wire in proximity to, but not in direct contact with, its pipeline whenever and where possible.

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC on November 28, 2005.

Joy Kadnar,

Acting Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–23641 Filed 12–2–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0613]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 4, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0613.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0613'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping at Flight Schools.

OMB Control Number: 2900–0613.

Type of Review: Extension of a currently approved collection.

Abstract: Flight schools are required to maintain records on students to support continued approval of their courses. VA uses the data collected to determine whether the courses and students meet the requirements for flight training benefits and to properly pay students.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 7, 2005, at page 33260.

Affected Public: Business or other for-profit, Not -for-profit institutions, and Federal Government.

Estimated Annual Burden: 600 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Estimated Annual Responses: 1,800.

Dated: November 23, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6792 Filed 12–2–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans Benefits Administration

[OMB Control No. 2900–0381]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 4, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374 or FAX (202) 565–6590. Please refer to ''OMB Control No. 2900–0381.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0381'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice for Election To Convey and/or Invoice for Transfer of Property, VA Form 26–8903.

OMB Control Number: 2900–0381.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8903 serves four purposes: Holder's election to convey, invoice for the purchase price of the property, VA's voucher for authorizing payment to the holder, and establishment of VA's property records. The form provides holders, who elected to convey properties to VA, with a convenient and uniform way of notifying VA regarding foreclosed GI home loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 29, 2005, at pages 56965–56966.

Affected Public: Business or Other for-Profit.

Estimated Annual Burden: 4,167.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Dated: November 22, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6794 Filed 12–2–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection Activities Under OMB Review

AGENCY: Human Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 4, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950. Please refer to ''OMB Control No. 2900–New.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Claim for Credit of Annual Leave, VA Form 0862.

OMB Control Number: 2900–New.

Type of Review: New Collection.

Abstract: Current and former employee's who were charged annual leave on a non-workday while on active military duty complete VA Form 0862 to request restoration of annual leave. Those employees who separated or retired from VA will receive a lump sum payment for any reaccredited annual leave. The claimant must provide documentation supporting the period that he or she were on active military duty during the time for which they were charged annual leave on a non-workday. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2005, at pages 24863–24864.

Affected Public: Individuals or households and Federal Government.

Estimated Annual Burden: 3,375 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 13,501.

Dated: November 21, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6795 Filed 12–2–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans Benefits Administration

[OMB Control No. 2900–New (Fiduciary)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 4, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6590. Please refer to ''OMB Control No. 2900–New (Fiduciary).''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (Fiduciary)'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Fiduciary Statement in Support of Appointment, VA form 21–0792.

Type of Review: New collection.

Abstract: Individual's seeking appointment as a fiduciary of VA beneficiaries complete VA Form 21–0792. VA uses the data collected to determine the individual's qualification as a fiduciary.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 12, 2005, at page 53834.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,500.

Dated: November 21, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–6796 Filed 12–2–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 232

Monday, December 5, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

Correction

In notice document E5–6606 appearing on page 71560 in the issue of Tuesday, November 29, 2005, make the following correction:

On page 71560, in the first column, the fourth paragraph from the top, beginning with ''One comment....'' it should read ''One comment was received; however, because it was filed after the expiration of the 30–day notice and comment period it was not considered.''

[FR Doc. Z5–6606 Filed 12–2–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
December 5, 2005

Part II

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final Grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2006 State Justice Institute grants, cooperative agreements, and contracts.

DATES: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Kevin Linskey, Executive Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100 X214.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

The fiscal year 2006 Science, State, Justice, and Commerce appropriations subcommittee conference report (H. Rept. 109–272/H.R. 2862) made available $3.5 million for the State Justice Institute (SJI), less a modest across-the-board rescission.

The Institute's Board of Directors intends to solicit project grant applications for certain strategic priorities, discussed further below, to invite selected applicants to apply for grants in key areas, and to continue the most important project grants currently assisting courts nationwide.

Types of Grants Available and Funding Schedules

SJI is offering six types of grants in FY 2006: Project Grants, Continuation Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) grants, Scholarships, and Partner Grants.

Project Grants. Project Grants (see sections II.B., III.O., V.B.1., VI.A., VII.B.1., and VIII.A.) are intended to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. As provided in section III.N. of the Guideline, Project Grants may ordinarily not exceed $300,000; however, grants in excess of $200,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

The deadline for submitting a Project Grant application is February 13, 2006. The Board of Directors will meet in May 2006 to approve grant awards. See section VI. for Project Grant application procedures.

Applicants for Project Grants will be required to contribute a cash match of not less than 50% of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties.

Continuation Grants. Continuation Grants (see sections II.B., III.D., V.B.2., VI.B., VII.B.1., VIII.A., and IX.5.H.1.b.) are intended to enhance specific programs or services begun during earlier Project Grants. An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

Applicants for Continuation Grants will be required to contribute a cash match of not less than 50% of the total cost of the ongoing project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties.

Technical Assistance Grants. Section II.C. reserves up to $300,000 for Technical Assistance Grants. Under this program, a State or local court or regional court association may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by January 6, 2006 will be notified by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified of the Board's decision by December 1, 2006. See section VI.B. for Technical Assistance Grant application procedures.

Judicial Branch Education Technical Assistance Grants. Section II.D. of the Guideline allocates up to $100,000 for grants under the JBE TA grant program this year. Grants of up to $20,000 are available to: (1) Enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (i.e., curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants.

Applicants submitting letters by January 6, 2006 will be notified by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified of the Board's decision by December 1, 2006. See section VI.D. for JBE TA Grant application procedures.

Scholarships. Section II.E. of the Guideline allocates up to $200,000 for scholarships this year to enable judges and court managers to attend out-of-State education and training programs. A scholarship of up to $1,500 may be awarded to pay for a recipient's tuition, travel, and lodging costs.

Starting this year, scholarships can also be used to cover the costs of enrolling in on-line classes that meet the criteria for acceptable programs as described below.

Scholarships for eligible applicants are approved largely on a ''first come, first served'' basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (e.g., trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel.

As before, recipients are limited to no more than one scholarship in a three-year period, unless the course specifically assumes multi-year participation.

Applicants interested in obtaining a scholarship for a program beginning between April 1 and June 30, 2006, must submit their applications and documents between January 2 and February 27, 2006. For programs beginning between July 1 and September 30, 2006, the applications and documents must be submitted between March 30 and May 26, 2006. For programs beginning between October 1 and December 31, 2006, the applications and documents must be submitted between July 3 and August 25, 2006. For programs beginning

between January 1 and March 31, 2007, the applications and documents must be submitted between October 2 and December 1, 2006. See section VI.E. for scholarship application procedures.

Partner Grants. Partner Grants (see sections II.F., III.M., V., VI.F., VII., and VIII.D.) are intended to allow SJI and federal, State, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. SJI and its funding partners may meld, pick and choose, or waive their grant requirements, application procedures, or grant cycles to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting State and local courts. Like Project Grants, Partner Grants will be awarded only to support initiatives likely to have a significant national impact.

Matching Requirements

With the exception of JBE TA grantees and scholarship recipients, all grantees must provide a cash match for any Institute grant. The matching requirements are summarized in sections III.L. and VIII.A.8. of the Guideline.

The following Grant Guideline is adopted by the State Justice Institute for FY 2006:

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I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by a Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two of who can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

A. Project Grants

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. Though the Board is likely to favor Project Grant applications focused on the Special Interest program categories described below, potential applicants are also encouraged to bring to the attention of the Institute innovative projects outside those categories. *Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.*

1. Special Interest Program Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a Special Interest project if it meets the four criteria set forth above and it falls within the scope of the Special Interest program categories designated below.

The Board has designated the areas set forth below as Special Interest program categories. The order of listing does not imply any ordering of priorities among the categories.

a. Managing Self-Represented Litigation

This category includes research, demonstration, evaluation, and education projects designed to improve the management of self-represented (*pro se*) litigation.

The Institute is particularly interested in supporting innovative projects that:

- Implement the next generation of innovations identified at the Summit on the Future of Self-Represented Litigation held in Chicago in March 2005;
- Compile and disseminate information on promising practices to

assist people who come to court without lawyers; and,

• Test and evaluate approaches permitting self-represented litigants to file pleadings, responses, and other forms electronically.

b. Application of Technology in the Courts

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels. The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, ''untested'' includes novel applications of technology developed for the private sector that have not previously been applied in the courts.

The Institute is particularly interested in supporting efforts to test and evaluate technologies that would:

• Compile promising practices for coordinating and controlling the use of multiple technologies to enhance court processes.

c. Children and Families in Court

This category includes research, demonstration, evaluation, technical assistance, and education projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that would:

• Implement the ''next steps'' identified for courts at the National Leadership Summit for Child Protection held in Minneapolis on September 20–23, 2005.

d. Performance Standards and Outcome Measures

This category includes projects that will develop and measure performance standards and outcomes for all aspects of court operations. The Institute is particularly interested in projects that would:

• Develop and test performance and outcome measures to assess the effectiveness of problem-solving courts.

• Develop low cost methods for measuring performance.

e. Elder Issues

This category includes research, demonstration, evaluation, and education projects designed to improve management of guardianship, probate, fraud, Americans with Disability Act, and other types of elder-related cases. The Institute is particularly interested in projects that would:

• Develop and evaluate judicial branch education programs addressing elder law and related issues.

f. Relationship Between State and Federal Courts

This category includes research, demonstration, evaluation, and education projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and federal courts and the courts, the legislative and executive branches, and the people. The Institute is particularly interested in projects that would:

• Develop and test materials that judges and court leaders could use to educate community groups and constituencies about federalism and the courts and the importance of judicial independence.

B. Continuation Grants

This category includes critical SJI-supported Project Grants of proven merit to courts nationwide. These projects must have:

1. Developed products, services, and techniques that may be used in States across the country; and

2. Created and disseminated products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

The application procedures for Continuation Grants may be found in section VI.B.

C. Technical Assistance Grants

The Board is reserving up to $300,000 to support the provision of technical assistance to State and local courts and regional court associations. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than $30,000 each, and shall only cover the cost of obtaining the services of expert consultants. Examples of expenses not covered Technical Assistance Grants include the salaries, benefits, travel, or training costs of full- or part-time court employees. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court or regional court association may apply for a Technical Assistance grant. The application procedures may be found in section VI.C.

D. Judicial Branch Education Technical Assistance Projects

The Board is reserving up to $100,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds. Judicial Branch Education Technical Assistance Grants are limited to no more than $20,000 each.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) are to:

1. Provide State and local courts and court associations with the opportunity to access expert strategic assistance to enable them to maintain judicial branch education programming during the current budget crisis; and

2. Enable courts and court associations to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix C.

Only State or local courts or court associations may apply for JBE TA funding. Application procedures may be found in Section VI.D. *Applicants are not required to contribute cash match to JBE TA grants.*

E. Scholarships for Judges and Court Managers

The Institute is reserving up to $200,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

1. Enhance the skills, knowledge, and abilities of judges and court managers;

2. Enable State court judges and court managers to attend out-of-State, or to enroll in online, educational programs sponsored by national and State providers that they could not otherwise attend or take online because of limited State, local, and personal budgets; and

3. Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Priority will be given to scholarship applications for attendance at out-of-State educational programs within the United States. Application procedures may be found in Section VI.E.

F. Partner Grants

Though many, if not most, Partner Grants will fall under the Special Interest program categories cited in section II.A., proposals addressing other emerging or high priority court-related problems will be considered on a case-by-case basis. The amount of funds reserved by the Board for these grants will depend upon the partnering opportunities available. Any organization described in section IV. shall be eligible to apply for, or receive, a Partner Grant.

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. Acknowledgment of SJI Support

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape or DVD developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape or DVD identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

B. Application

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed description, not to exceed 25 pages, of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. See section VI. for a complete description of application submission requirements. See Appendix D for the application forms.

C. Close-out

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

D. Continuation Grant

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VI.B. for a complete description of Continuation Grant application requirements.

E. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: The learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

F. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

G. Disclaimer

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section VIII.A.11.a.(2) for the precise wording of this statement.

H. Grant Adjustment

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) must be requested at least 30 days in advance of the implementation of the requested change, except in the most extraordinary circumstances.

I. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

J. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

K. Judicial Branch Education Technical Assistance (JBE TA) Grant

A grant of up to $20,000 awarded to a State or local court or court association to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. See section VI.D. for a complete description of JBE TA Grant application requirements.

L. Match

The portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project or the application of project income (e.g., tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project or that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

See section VIII.A.8. for the Institute's matching requirements.

M. Partner Grant

A flexible, loosely defined grant that maximizes the ability of SJI to pair with other government or philanthropic organizations to channel pooled financial resources to the most pressing dilemmas confronting State and local courts. The amount and duration of these grants will be determined on a case-by-case basis. The grant guidelines under which grantees will operate is likely to be an amalgam of the grant management best practices of SJI and its partner financiers.

N. Products

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; DVDs; audiotapes; computer software; and CD–ROM disks.

O. Project Grant

An initial grant lasting up to 36 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $300,000 a year; however, a grant in excess of $200,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact.

P. Project-Related Income

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, see section IX.G.

Q. Scholarship

A grant of up to $1,500 awarded to a judge or court manager to cover the cost of tuition, transportation, and reasonable lodging to attend an out-of-State educational program within the United States or to participate in an online course. See section VI.E. for a complete description of scholarship application requirements.

R. Special Condition

A requirement attached to a grant award that is unique to a particular project.

S. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court means that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

T. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

U. Technical Assistance Grant

A grant, lasting up to 12 months, of up to $30,000 to a State or local court or regional court association to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem. See section VI.C. for a complete description of Technical Assistance Grant application requirements.

IV. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments* (42 U.S.C. 10705(b)(1)(B)).

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

In FY 2006, the Institute will support the following types of grants:

1. Project Grants

See sections II.A., III.O., VI.A., VII.B. and C., and VIII.A. Project Grants will be limited to only the Special Interest categories listed in section II.A. Should an insufficient number of qualifying applications be received, the Board reserves the right to solicit applications for projects spanning topics beyond those listed in section II.A.

2. Continuation Grants

See sections II.B., III.D. and VI.B.

3. Technical Assistance Grants

See sections II.C., III.U., and VI.C. In FY 2006, the Institute is reserving up to $300,000 for these grants.

4. Judicial Branch Education Technical Assistance Grants

See sections II.D., III.K., and VI.D. In FY 2006, the Institute is reserving up to $100,000 for Judicial Branch Education Technical Assistance Grants.

5. Scholarships

See sections II.E., III.Q., and VI.E. In FY 2006, the Institute is reserving up to $200,000 for scholarships for judges and court managers.

6. Partner Grants

See sections II.F., III.M., V., VI.F., VII., and VIII.D.

C. Maximum Size of Awards

1. Applicants for Project Grants may request funding for amounts up to $300,000.

2. Applicants for Continuation Grants may request funding for amounts up to $150,000.

3. Applicants for Technical Assistance Grants may request funding for amounts up to $30,000.

4. Applicants for Judicial Branch Education Technical Assistance Grants may request funding for amounts up to $20,000.

5. Applicants for scholarships may request funding for amounts up to $1,500.

6. SJI and its financial partners may set any level of funding for Partner Grants, subject to the entire amount of the grant being available at the time of award; applicants for Partner Grants may request any amount of funding.

D. Length of Grant Periods

1. Grant periods for Project Grants ordinarily may not exceed 36 months. Absent extraordinary circumstances, no grant will continue for more than five years.

2. Grant periods for Continuation Grants ordinarily may not exceed 15 months.

3. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

4. Grant periods for Partner Grants will be limited as necessary by SJI and its financial partners.

VI. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract, program narrative, and budget narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix D for the Project Grant application forms. *For a summary of the application process, visit the Institute's Web site (www.statejustice.org) and click on On-Line Tutorials, then Project Grant.*

1. Forms

a. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approved funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VI.A.4. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section VIII.A.7.)

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing résumés and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.*, to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.*, provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas To Be Covered

The applicant should note the Special Interest category or categories that are addressed by the proposed project see section II.A.

c. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems

that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluations

(1) Tasks and Methods. The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) For research and evaluation projects, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) For education and training projects, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) For demonstration projects, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) For technical assistance projects, the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) Evaluation. Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) Research. An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) Education and Training. The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) Demonstration. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (*e.g.*, how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (*e.g.*, was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (*e.g.*, what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) Technical Assistance. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter

(*i.e.*, no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. Products

The program narrative in the application should contain a description of the products to be developed (*e.g.*, training curricula and materials, videotapes, DVDs, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (see Appendix A), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) Dissemination Plan. The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (*i.e.*, whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VIII.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support (a list of these libraries is contained in Appendix A). Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product (*i.e.*, a written report with a reference to the web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html or .pdf format.

(2) Types of Products and Press Releases. The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VIII.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) Institute Review. Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD–ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute (see section VIII.A.11.e.).

(4) Acknowledgment, Disclaimer, and Logo. Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VIII.A.11.a.2. of the Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel (see section IV.). If the applicant is a non-judicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. Organizational Capacity

Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which

documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts (see Appendix D).

k. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by February 17, 2006.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.*, the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs

Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). See sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting

agency, a copy of the approved rate agreement must be attached to the application.

l. Match

Applicants for Project Grants must provide a cash match equaling at least 50% of the total cost of the project.

For example, if the Institute awards an applicant $100,000 for a grant, the applicant, possibly in combination with a third party, would be required to provide a $100,000 cash match (note: a federal third party may contribute no more than 49% of the total cost of a project).

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made (see sections III.L., VIII.A.8., and IX.E.1.).

The Institute may waive the cash match requirements only in the most extraordinary circumstances (see section VIII.A.8.b.).

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

All applications must be sent by first class or overnight mail or by courier *no later than February 13, 2006.* A postmark or courier receipt will constitute evidence of the submission date. Please mark PROJECT APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Continuation Grants

1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities performed under a previous grant. They are intended to maintain or enhance the specific program or service produced or established during the prior grant period.

2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant will continue for more than five years.

3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices. See Appendix D for the application forms. A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

For a summary of the application process, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Continuation Grant.

The program narrative should conform to the length and format requirements set forth in section VI.A.3. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. *Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.*

e. *Tasks, Methods, Staff, and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

5. Budget and Budget Narrative

a. Institute Funds

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in section VI.A.4. above. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

b. Matching Contribution

i. Applicants for Continuation Grants must provide a cash match equaling at least 50% of the total cost of the project.

For example, if the Institute awards an applicant $100,000 for a continuation grant, the applicant, possibly in combination with a third party, would be required to provide a $100,000 cash match (note: a federal third party may contribute no more than 49% of the total cost of a project).

ii. The Institute may waive the cash match requirements in extraordinary circumstances (see section VIII.A.8.c.).

6. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

7. Submission Requirements

The submission requirements set forth in section VI.A.5., other than the mailing deadline, apply to continuation applications.

C. Technical Assistance Grants

1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts and regional court associations to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures.

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator. Letters from regional court associations must be signed by the president of the association.

3. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project From the State Supreme Court or Its Designated Agency or Council.* If a State or local court submits a request for technical assistance, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, Line-Item Budget Form (see Appendix E), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). *Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day from Institute funds.* In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

A match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in *extraordinary* circumstances (see section VIII.A.8.b.).

Recipients of Technical Assistance Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VIII.A.3.).

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 6, 2006 will be notified of the Institute's decision by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified by December 1, 2006.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Grant Committee, letters sent under separate cover must be received by the same date as the technical assistance request being supported.

D. Judicial Branch Education Technical Assistance Grants

1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts and court associations to support: (1) The provision of expert strategic assistance designed to enable them to present judicial branch education programs; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a specific curriculum once (i.e., with one grant) in a given State.

JBE TA Grants may support consultant assistance in maintaining or developing systematic or innovative judicial branch educational programming. The assistance might include expert consultation in developing strategic plans to ensure the continued provision of judicial branch education programming despite fiscal constraints; development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State or in a region.

2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *For On-Site Consultant Assistance: (1) Need for Funding.* What is the critical judicial branch educational need facing the court or association? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) Project Description. What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff or association members undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or affiliated with the association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) Likelihood of Implementation. What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court or association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the applicant, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) Support for the Project From the State Supreme Court or Its Designated Agency or Council. If a State or local court submits an application, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

b. For Adaptation of a Curriculum: (1) Project Description. What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)?

(2) Need for Funding. Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or

local funds, once it has been successfully adapted and tested?

(3) Likelihood of Implementation. What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) Expressions of Interest by Judges and/or Court Personnel. Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend (applicants may demonstrate this by attaching letters of support)?

(5) Chief Justice's Concurrence. Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee (see Appendix D, FORM B).

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix E) and a budget narrative (see A.4.d. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with TA grants to State or local courts, a match must be provided in an amount equal to at least 50% of the grant amount requested. Recipients of JBE TA grants are not required to provide a cash match. The Institute may waive the match requirements in *extraordinary* circumstances (see section VIII.A.8.b.).

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 6, 2006 will be notified of the Institute's decision by April 7, 2006; those submitting letters between January 9 and February 24, 2006 will be notified by June 9, 2006; those submitting letters between February 24 and June 2, 2006 will be notified by September 15, 2006; and those submitting letters between June 5 and September 22, 2006 will be notified by December 1, 2006.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2006 should submit its application no later than January 6, 2006, in time for the Board's Spring meeting.

E. Scholarships

1. Purpose and Scope

The purposes of the Institute's scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; allow State court judges and court managers to enroll and participate in online courses; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purposes of attending an educational program in another State or enrolling in an online educational program. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed $150 per night, including taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (e.g., reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.485/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of $1,500 and other costs of attending the program—such as meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the scholarship award process, visit the Institute's Web site at *www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. Recipients. Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. Courses. A scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works or online. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

c. Limitation. Applicants may not receive more than one scholarship in a three-year period unless the course specifically assumes multi-year participation.

3. Forms

a. Scholarship Application—FORM S1 (Appendix F)

The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or

photocopied signatures will not be accepted. The Institute anticipates switching to an electronic scholarship application process sometime during fiscal year 2006.

b. Scholarship Application Concurrence—FORM S2 (Appendix F)

Judges and court managers applying for scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix F). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

January 2 and February 27, 2006—for programs beginning between April 1 and June 30, 2006;

March 30 and May 26, 2006—for programs beginning between July 1 and September 30, 2006;

July 3 and August 25, 2006—for programs beginning between October 1 and December 31, 2006; and

October 2 and December 1, 2006—for programs beginning between January 1 and March 31, 2007.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

F. Partner Grants

1. Purpose and Scope

The purpose of the Institute's Partner Grants is to marry government and philanthropic organizations rich in financial resources with courts and court-related organizations that are long on talent but short on cash. These grants are a direct response to the Congressionally mandated 50 percent cash match applied to Project and Continuation Grants. SJI realizes that many worthy potential applicants will not be able to make the cash match requirement. Therefore, it is incumbent upon SJI to attempt to actively bring resources, needs, and capabilities together to further the interests of all. The terms and conditions of Partner Grants have been loosely defined to maximize participation by potential financial partners. SJI anticipates that many awards under this program will be one of a kind and will require unique grant application and management procedures.

Therefore, the application procedures for Partner Grants will be determined by SJI and its financial partners on a case-by-case basis.

VII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. Project and Continuation Grant Applications

a. Project and Continuation Grant applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget;

(10) The demonstration of cooperation and support of other agencies that may be affected by the project; and,

(11) The proposed project's relationship to one of the Special Interest categories set forth in section II.A.

b. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section IV.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and,

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. For on-site consultant assistance:

(1) Whether the assistance would address a critical need of the court or association;

(2) The soundness of the technical assistance approach to the problem;

(3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

(4) The commitment of the court or association to act on the consultant's recommendations; and,

(5) The reasonableness of the proposed budget.

b. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and,

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent;

b. The unavailability of State or local funds or scholarship funds from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and,

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

5. Partner Grants

It seems probable that the selection criteria for Partner Grants will be driven by the collective priorities of the ''bankers' roundtable'' that forms around this grant-making opportunity and the collective assessments of roundtable participants regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like.

C. Review and Approval Process

1. Project and Continuation Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. The staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch Education Technical Assistance Grants to the committee established for each program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively. In the event of a tie vote, the Chairman will serve as the tie-breaker.

The Chairman of the Board will sign approved awards on behalf of the Institute.

4. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend upon negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will have to be approved by the Board of Directors on whatever schedule makes sense at the time.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration.

VIII. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project and Continuation Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project and continuation grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section IX.K. of the Guideline for the requirements of such audits). Scholarship recipients, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval. Failure to comply with these requirements could result in the termination of a grantee's award.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients are required to provide a match (see section III.L. for the definition of match). The amount and nature of required match depends on the type grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsection a. below.

a. Project and Continuation Grants

All grantees are required to provide a cash match equaling at least 50% of the total project cost. For example, if SJI awards a grantee $100,000, the grantee would be required to provide $100,000 in cash match.

b. Waiver.

(1) The match requirement may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State or the highest ranking official in the requesting organization and approval by the Board of Directors. 42 U.S.C. 10705(d).

(2) The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section VII.B.1.b.).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of

any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

b. Charges for Grant-Related Products/ Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute (see sections III.O. and IX.G. for requirements regarding project-related income realized during the project period).

c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in Appendix A. Labels for these libraries are available on the Institute's Web site, *www.statejustice.org.*).

(4) Where possible and cost-effective, hard copies of products sent to SJI depository libraries should be bound rather than put in a ring binder. *Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product.* Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape, DVD or CD-ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

f. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later

than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination and approval in section VIII.A.11.d. and e.) and the reporting requirements below:

1. Judicial Branch Education Technical Assistance Grant Reporting Requirements

Recipients of Judicial Branch Education Technical Assistance Grants must submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report.

2. Technical Assistance Grant Reporting Requirements

Recipients of Technical Assistance Grants must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the scholarship recipient's State. A State or local

jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Vouchers must be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

D. Recipients of Partner Grants

Compliance requirements for Partner Grants will likely be determined no later than the time of award, will depend upon the best judgments of SJI and its financial partners, and likely will be unique to each grant.

IX. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, with the possible exception of Partner Grant grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained on the OMB Web site at *www.whitehouse.gov/omb.*)

1. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

2. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

3. *Office of Management and Budget (OMB) Circular A–88*, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

4. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

5. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

6. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

7. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

8. *Office of Management and Budget (OMB) Circular A–133*, Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council (see section III.F.).

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VIII.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (see sections K. below and VIII.A.3.).

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with

any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a TOTAL PROJECT COST basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section (see section IX.C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute (see section IX.H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income from the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a ''check-issued'' basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Grants.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (i.e., on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be number 1, the second number 2, etc.

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. *Due Dates and Contents.* A Financial Status Report is required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; A–87, Cost Principles for State and Local Governments; and A–122, Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *www.whitehouse.gov/omb.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval (see section X.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits) (see sections III.L. and VI.A.4.d.(11)).

a. *Approved Plan Available.*

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110*.

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project or Continuation Grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128*, or *OMB Circular A–133*, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a subsequent grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship, even when the project will continue under a Continuation Grant.

2. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. A request for an extension must be received by the Institute at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period. If a grantee fails to submit a request for extension in a timely manner, or such request is denied, the Institute will not, under any circumstances, accept requests for payment after the 90-day close-out period, even for costs legitimately incurred and properly documented during the project period.

X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of the Institute:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section IX.I.2.d.).

For Continuation Grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (see section IX.I.2.b.).

14. Consultant rates (see section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his or her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section IX.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

Robert A. Miller, Chairman, Chief Justice (ret.), Supreme Court of South Dakota, Pierre, SD.

Joseph F. Baca, Vice-Chairman, Chief Justice (ret.), New Mexico Supreme Court, Albuquerque, NM.

Sandra A. O'Connor, Secretary, State's Attorney of Baltimore County, Towson, MD.

Keith McNamara, Esq., Executive Committee Member, McNamara & McNamara, Columbus, OH.

Terrence B. Adamson, Esq., Executive Vice-President, The National Geographic Society, Washington, DC.

Robert N. Baldwin, Executive Vice President and General Counsel, National Center for State Courts, Richmond, VA.

Carlos R. Garza, Esq., Administrative Judge (ret.), Round Rock, TX.

Sophia H. Hall, Administrative Presiding Judge, Circuit Court of Cook County, Chicago, IL.

Tommy Jewell, Presiding Children's Court Judge (ret.), Albuquerque, NM.

Arthur A. McGiverin, Chief Justice (ret.), Supreme Court of Iowa, Ottumwa, IA.

Kevin Linskey, Executive Director (ex officio).

Kevin Linskey,

Executive Director.

Appendix A—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis
State Law Librarian
Alabama Supreme Court
Judicial Building
300 Dexter Avenue
Montgomery, AL 36104
(334) 242–4347
director@alalinc.net

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows
State Law Librarian
Alaska State Court Law Library
303 K Street
Anchorage, AK 99501
(907) 264–0583
cfellows@courts.state.ak.us

Arizona

Supreme Court Library

Ms. Lani Orosco
Staff Assistant
Arizona Supreme Court
Staff Attorney's Office
Library
1501 W. Washington, Suite 445
Phoenix, AZ 85007
(602) 542–5028
lorosco@supreme.sp.state.az.us

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich
Director
Administrative Office of the Courts
Supreme Court of Arkansas
Justice Building
625 Marshall Street
Little Rock, AR 72201
(501) 682–9400
jd.gingerich@mail.state.ar.us

California

Administrative Office of the Courts

Mr. William C. Vickrey
Administrative Director of the Courts
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102
(415) 865–4235
william.vickrey@jud.ca.gov

Colorado

Supreme Court Library

Ms. Linda Gruenthal
Deputy Supreme Court Law Librarian
2 East 14th Avenue
Denver, CO 80203
(303) 837–3720
cscltech@state.co.us

Connecticut

State Library

Ms. Denise D. Jernigan
Law Librarian
Connecticut State Library
231 Capitol Avenue
Hartford, CT 06106
(860) 757–6598
djernigan@cslib.org

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin
Deputy Director
Administrative Office of the Courts
Carvel State Office Building
820 North French Street
11th Floor
P.O. Box 8911
Wilmington, DE 19801
(302) 577–8481
michael.mclaughlin@state.de.us

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks
Executive Officer
District of Columbia Courts
500 Indiana Avenue, NW., Suite 1500
Washington, D.C. 20001
(202) 879–1700
Wicksab@dcsc.gov

Florida

Administrative Office of the Courts

Ms. Elisabeth H. Goodner
State Courts Administrator
Office of the State Courts Administrator
Florida Supreme Court
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399
(850) 922–5081
goodnerl@flcourts.org

Georgia

Administrative Office of the Courts

Mr. David Ratley
Director
Administrative Office of the Courts
244 Washington Street, SW., Suite 300
Atlanta, GA 30334
(404) 656–5171
ratleydl@gaaoc.us

Hawaii

Supreme Court Library

Ms. Ann Koto
State Law Librarian
The Supreme Court Law Library
417 South King St., Room 119
Honolulu, HI 96813
(808) 539–4964
Ann.S.Koto@courts.state.hi.us

Idaho

AOC Judicial Education Library/State Law Library

Mr. Richard Visser
State Law Librarian
Idaho State Law Library
Supreme Court Building
451 West State St.
Boise, ID 83720
(208) 334–3316
lawlibrary@isc.state.id.us

Illinois

Supreme Court Library

Ms. Brenda Larison
Supreme Court of Illinois Library
200 East Capitol Avenue
Springfield, IL 62701–1791
(217) 782–2425
blarison@court.state.il.us

Indiana

Supreme Court Library

Ms. Terri L. Ross
Supreme Court Librarian
Supreme Court Library
State House, Room 316
Indianapolis, IN 46204
(317) 232–2557
tross@courts.state.in.us

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty
Director of Judicial Branch Education
Iowa Judicial Branch
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319
(515) 242–0190
jerry.beatty@jb.state.ia.us

Kansas

Supreme Court Library

Mr. Fred Knecht
Law Librarian
Kansas Supreme Court Library
Kansas Judicial Center
301 SW. 10th Avenue
Topeka, KS 66612
(785) 296–3257
knechtf@kscourts.org

Kentucky

State Law Library

Ms. Vida Vitagliano
Cataloging and Research Librarian
Kentucky Supreme Court Library
700 Capitol Avenue, Suite 200
Frankfort, KY 40601
(502) 564–4185
vidavitagliano@mail.aoc.state.ky.us

Louisiana

State Law Library

Ms. Carol Billings
Director
Louisiana Law Library
Louisiana Supreme Court Building
400 Royal Street
New Orleans, LA 70130
(504) 310–2401
cbillings@lasc.org

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall
State Law Librarian
43 State House Station
Augusta, ME 04333
(207) 287–1600

lynn.randall@legislature.maine.gov

Maryland

State Law Library

Mr. Steve Anderson
Director
Maryland State Law Library
Court of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401
(410) 260–1430
steve.anderson@courts.state.md.us

Massachusetts

Middlesex Law Library

Ms. Linda Hom
Librarian
Middlesex Law Library
Superior Court House
40 Thorndike Street
Cambridge, MA 02141
(617) 494–4148
midlawlib@yahoo.com

Michigan

Michigan Judicial Institute

Dawn F. McCarty
Director
Michigan Judicial Institute
P.O. Box 30205
Lansing, MI 48909
(517) 373–7509
mccartyd@courts.mi.gov

Minnesota

State Law Library (Minnesota Judicial Center)

Ms. Barbara L. Golden
State Law Librarian
G25 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, MN 55155
(612) 297–2089
barb.golden@courts.state.mn.us

Mississippi

Mississippi Judicial College

Hon. Leslie G. Johnson
Executive Director
Mississippi Judicial College
P.O. Box 8850
University, MS 38677
(662) 915–5955
lwleslie@olemiss.edu

Montana

State Law Library

Ms. Judith Meadows
State Law Librarian
State Law Library of Montana
P.O. Box 203004
Helena, MT 59620
(406) 444–3660
jmeadows@state.mt.us

Nebraska

Administrative Office of the Courts

Mr. Philip D. Gould, Director
Judicial Branch Education
Administrative Office of the Courts/Probation
521 South 14th St., Suite 200
Lincoln, NE 68508–2707
(402) 471–3072 (office)/(402)471–3071 (fax)
pgould@nsc.state.ne.us

Nevada

To be determined—

New Hampshire

New Hampshire Law Library

Ms. Mary Searles
Technical Services Law Librarian
New Hampshire Law Library
Supreme Court Building
One Noble Drive
Concord, NH 03301–6160
(603) 271–3777
msearles@courts.state.nh.us

New Jersey

New Jersey State Library

Mr. Thomas O'Malley
Supervising Law Librarian
New Jersey State Law Library
185 West State Street
P.O. Box 520
Trenton, NJ 08625–0250
(609) 292–6230
tomalley@njstatelib.org

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar
Librarian
Supreme Court Library
Post Office Drawer L
Santa Fe, NM 87504
(505) 827–4850

New York

Supreme Court Library

Ms. Barbara Briggs
Law Librarian
Syracuse Supreme Court Law Library
401 Montgomery Street
Syracuse, NY 13202
(315) 671–1150
bbriggs@courts.state.ny.us

North Carolina

Supreme Court Library

Mr. Thomas P. Davis
Librarian
North Carolina Supreme Court Library
500 Justice Building
2 East Morgan Street
Raleigh, NC 27601
(919) 733–3425
tpd@sc.state.nc.us

North Dakota

Supreme Court Library

Ms. Marcella Kramer
Assistant Law Librarian
Supreme Court Law Library
600 East Boulevard Avenue, Dept. 182
2nd Floor, Judicial Wing
Bismarck, ND 58505–0540
(701) 328–2229
mkramer@ndcourts.com

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Ms. Margarita M. Palacios
Director of Courts
Supreme Court of the Commonwealth of the Northern Mariana Islands
P.O. Box 502165
Saipan, MP 96950
(670) 235–9700
supremecourt@saipan.com

Ohio

Supreme Court Library

Mr. Ken Kozlowski
Director
Law Library
Supreme Court of Ohio
65 South Front Street, 11th Floor
Columbus, OH 43215–3431
(614) 387–9666
kozlowsk@sconet.state.oh.us

Oklahoma

Administrative Office of the Courts

State Court Administrator
Administrative Office of the Courts
1915 North Stiles Avenue, Suite 305
Oklahoma City, OK 73105
(405) 521–2450

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click
State Court Administrator
Oregon Judicial Department
Supreme Court Building
1163 State Street
Salem, OR 97301
(503) 986–5500
kingsley.w.click@ojd.state.or.us

Pennsylvania

State Library of Pennsylvania

Ms. Barbara Miller
Collection Management Librarian
State Library of Pennsylvania
Bureau of State Library
333 Market Street
Harrisburg, PA 17126–1745
(717) 787–5718
barbmiller@state.pa.us

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq.
Director, Area of Planning and Management
Office of Court Administration
P.O. Box 917
Hato Rey, PR 00919

Rhode Island

Roger Williams University

Ms. Gail Winson
Director of Law Library/Associate Professor of Law
Roger Williams University
School of Law Library
10 Metacom Avenue
Bristol, RI 02809
401/254–4531
gwinson@law.rwu.edu

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley
Director
Coleman Karesh Law Library
University of South Carolina

Main and Green Streets
Columbia, SC 29208
(803) 777–5944
hinckley@law.sc.edu

South Dakota

State Law Library

Librarian
South Dakota State Law Library
500 East Capitol
Pierre, South Dakota 57501
(605) 773–4898
donnis.deyo@ujs.state.sd.ud

Tennessee

Tennessee State Law Library

Hon. Cornelia A. Clark
Executive Director
Administrative Office of the Courts
511 Union Street, Suite 600
Nashville, TN 37219
(615) 741–2687
cclark@tscmail.state.tn.us

Texas

State Law Library

Mr. Marcelino A. Estrada
Director, State Law Library
P.O. Box 12367
Austin, TX 78711
(512) 463–1722
tony.estrada@sll.state.tx.us

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian
The Library
Territorial Court of the Virgin Islands
Post Office Box 70
Charlotte Amalie, St. Thomas
Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Jessica Van Buren
Utah State Law Library
450 South State, W–13
P.O. Box 140220
Salt Lake City, UT 84114–0220
(801) 238–7991
jessicavb@email.utcourts.gov

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan
Law Librarian
Vermont Department of Libraries
109 State Street
Pavilion Office Building
Montpelier, VT 05609
(802) 828–3268
paul.donovan@dol.state.vt.us

Virginia

Administrative Office of the Courts

Ms. Gail Warren
State Law Librarian
Virginia State Law Library
Supreme Court of Virginia
100 North Ninth Street, 2nd Floor
Richmond, VA 23219–2335
(804) 786–2075
gwarren@courts.state.va.us

Washington

Washington State Law Library

Ms. Kay Newman
State Law Librarian
Washington State Law Library
Temple of Justice
P.O. Box 40751
Olympia, WA 98504–0751
(360) 357–2136
kay.newman@courts.wa.gov

West Virginia

Supreme Court of Appeals Library

Ms. Kaye Maerz
State Law Librarian
West Virginia Supreme Court of Appeals Library
1900 Kanawha Boulevard East
Building 1, Room E–404
Charleston, WV 25305
(304) 558–2607
klm@courts.state.wv.us

Wisconsin

State Law Library

Ms. Jane Colwin
State Law Librarian
State Law Library
120 M.L.K. Jr. Boulevard
Madison, WI 53703
(608) 261–2340
jane.colwin@wicourts.gov

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson
Law Librarian
Wyoming State Law Library
Supreme Court Building
2301 Capitol Avenue
Cheyenne, WY 82002
(307) 777–7509
kcarls@state.wy.us

NATIONAL

American Judicature Society

Ms. Deborah Sulzbach
Acquisitions Librarian
Drake University
Law Library, Opperman Hall
2507 University Avenue
Des Moines, IA 50311–4505
(515) 271–3784
e-mail: *deborah.sulzbach@drake.edu*

JERITT

Dr. Maureen E. Conner
Executive Director
The JERITT Project
Michigan State University
1407 S. Harrison Road
Suite 330 Nisbet
East Lansing, MI 48823–5239
(517) 353–8603
(517) 432–3965 (fax)
connerm@msu.edu
website: *http://jeritt.msu.edu*

National Center for State Courts

Ms. Joan Cochet
Library Specialist
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185–4147
(757) 259–1826
library@ncsc.dni.us

National Judicial College

Mr. Randall Snyder
Law Librarian
National Judicial College
Judicial College Building, MS 358
Reno, NV 89557
(775) 327–8278
snyder@judges.org

Appendix B—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (http://jeritt.msu.org or 517/353–8603) for more information about these and other SJI-supported technical assistance projects.

Application of Technology

Technology Plan (Office of the South Dakota State Court Administrator: SJI–99–066).

Children and Families in Court

Expanded Unified Family Court (Ventura County, CA, Superior Court: SJI–01–122).

Trial Court Performance Standards for the Unified Family Court of Delaware (Family Court of Delaware: SJI–98–205).

Court Planning, Management, and Financing

Job Classification and Pay Study of the New Hampshire Courts (New Hampshire Administrative Office of the Courts: SJI–98–011).

A Model for Building and Institutionalizing Judicial Branch Strategic Planning (12th Judicial Circuit, Sarasota, FL: SJI–98–266).

Strategic Planning (Fourth Judicial District Court, Hennepin County, MN: SJI–99–221).

Differentiated Case Management for the Improvement of Civil Case Processing in the Trial Courts of Texas (Texas Office of Court Administration: SJI–99–222).

Dispute Resolution and the Courts

Evaluating the New Mexico Court of Appeals Mediation Program (New Mexico Supreme Court: SJI–00–122).

Improving Public Confidence in the Courts

Mississippi Task Force on Gender Fairness in the Courts (Mississippi Administrative Office of the Courts: SJI–00–108).

Analysis of the Juror Debriefing Project (King County, WA, Superior Court: SJI–00–049).

Improving the Court's Response to Family Violence

New Hampshire Fatality Reviews (New Hampshire Administrative Office of the Courts: SJI–99–142).

Education and Training for Judges and Other Court Personnel

Iowa Supreme Court Advisory Committee on Judicial Branch Education (Iowa State Court Administrator's Office: SJI–01–200).

Appendix C—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. Please refer to section VI.C. for information on submitting a letter application for a Judicial Branch Education Technical Assistance Grant. A list of all SJI-supported education projects is available on the SJI Web site (*http://www.statejustice.org*). Please also check with the JERITT project (*http://jeritt.msu.edu or 517/353–8603*) and your State SJI-designated library (see Appendix A) for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

Alternative Dispute Resolution

Judicial Settlement Manual (National Judicial College: SJI–89–089).

Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277).

Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002).

Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038).

Court Coordination

Collaboration: A Training Curriculum to Enhance the Effectiveness of Criminal Justice Teams (Center for Effective Public Policy: SJI–99–039).

Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027).

Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88-NIC–001).

Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087).

Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175).

Court Management

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).

Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056).

A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052).

Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043).

Strengthening Rural Courts of Limited Jurisdiction and Team Training for Judges and Clerks (Rural Justice Center: SJI–90–014, SJI–91–082).

Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214).

Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068).

Managing Mass Tort Cases (National Judicial College: SJI–94–141).

Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).

Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/ National Center for State Courts: SJI–96–159).

Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041).

Courts and Communities

Reporting on the Courts and the Law (American Judicature Society: SJI–88–014).

Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083).

National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013).

Access to Justice: The Impartial Jury and the Justice System and When Implementing the Court-Related Needs of Older People and Persons With Disabilities: An Instructional Guide (National Judicial College: SJI–91–054).

You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048).

Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040).

Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI–98–008).

Charting the Course of Public Trust and Confidence in Our Courts (Mid-Atlantic Association for Court Management: SJI–98–208).

Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI–98–268).

Public Trust and Confidence (Arizona Courts Association: SJI–99–063).

Diversity, Values, and Attitudes

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071).

The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058).

Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI–91–043).

Cultural Diversity Awareness in Nebraska Courts From Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI–93–028).

Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063).

A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and The Ethics Fieldbook: Tool For Trainers (American Judicature Society: SJI–93–068).

Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075).

Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019).

Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006).

Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082).

Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI–95–245).

Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI–96–089).

Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150).

When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI–96–161).

When Judges Speak Up: Ethics, the Public, and the Media (American Judicature Society: SJI–96–152).

Family Violence and Gender-Related Violent Crime

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081).

Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062).

Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003, SJI–98–133 [video curriculum]).

Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255).

Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95–019).

Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274).

Health and Science

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030).

Judicial Education for Appellate Court Judges

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086).

Civil and Criminal Procedural Innovations for Appellate Courts (National Center for State Courts: SJI–94–002).

Judicial Branch Education: Faculty and Program Development

The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education (University of Memphis: SJI–91–021).

''*Faculty Development Instructional Program*'' from *Curriculum Review* (National Judicial College: SJI–91–039).

Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233).

Institute for Faculty Excellence in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–96–042; University of Memphis: SJI–01–202).

Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040).

Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028).

A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078).

Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043).

New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155).

Magistrates Correspondence Course (Alaska Court System: SJI–92–156).

Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058).

Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).

Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI–98–001).

Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041).

Juveniles and Families in Court

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017).

Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI–94–321).

Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders (Brandeis University: SJI–99–150).

Strategic and Futures Planning

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI–89–029).

An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045).

Substance Abuse

Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–91–095).

Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291).

Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030).

Judicial Education on Substance Abuse (American Judges Association and National Center for State Courts: SJI–01–210).

BILLING CODE 6820–SC–P

Appendix D

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
_____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person
_____
k. Title _____
l. E-Mail Address _____

2. TYPE OF APPLICANT *(Circle appropriate letter)*
☐ State court
☐ National organization operating in conjunction with State court
☐ National State court support organization
☐ College or university
☐ Other non-profit organization or agency
☐ Individual
☐ Corporation or partnership
☐ Other unit of government
☐ Other _____ *(specify)*

3. PROPOSED START DATE _____

4. PROJECT DURATION (Months) _____

5. EMPLOYER IDENTIFICATION # _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____
_____

7. ENTITY TO RECEIVE FUNDS *(if different from above)*
a. Organizational Name _____
_____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person
_____
k. Title _____
l. E-Mail Address _____

8. a. AMOUNT REQUESTED FROM SJI $_____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash match $_____
c. TOTAL MATCH $ 0
d. TOTAL PROJECT COST $ 0

9. TITLE OF PROPOSED PROJECT
_____

10. CONGRESSIONAL DISTRICT OF: _____ (Name of Representative; District Number) _____ (Project (if different than applicant): Name of Representative; District Number)

11. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.

_____ _____ _____
SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT TITLE DATE
(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)

FOR INSTITUTE USE ONLY

12. a. APPLICATION NUMBER _____ b. CONCEPT PAPER NUMBER _____ c. GRANT NUMBER _____	13. DATE RECEIVED	14. DATE OF ACTION

Form A 09/00

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-1 Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of applicant, including phone and fax numbers and web site address; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award. (example: 06/01/2004).

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. **Employer Identification #** as assigned by the Internal Revenue Service.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).

7. a-1 **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**

8. a Insert the **amount requested** from the State Justice Institute to conduct the project.

8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.

8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.

8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.

9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

(Form B)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____,
Name of Applicant

approves its submission to the State Justice Institute, and

☐ agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

☐ designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
Signature *Date*

_____
Name

_____
Title

INSTRUCTIONS

The State Justice Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							0
Fringe Benefits							0
Consultant / Contractual							0
Travel							0
Equipment							0
Supplies							0
Telephone							0
Postage							0
Printing / Photocopying							0
Audit							0
Other (specify)							0
Direct Costs	0	0	0	0	0	0	0
Indirect Costs							0
Total	0	0	0	0	0	0	0

Remarks:

Form C 5/95 *(Instructions on reverse side)*

91853

Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE

PAGE ____ OF ____

PROJECT BUDGET

(SPEADSHEET FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

(See instruction regarding column headings)

ITEM							
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs	0	0	0	0	0	0	0
Indirect Costs (%)							
SJI Total	0	0	0	0	0	0	0
STATE FUNDS							
FEDERAL FUNDS							
APPLICANT FUNDS							
OTHER FUNDS							
IN-KIND FUNDS							
Total	0	0	0	0	0	0	0

Form C1 5/95 *(Instructions on reverse side)*

91854

Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE
ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

   a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

   b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

   c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:
    This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____

Signature **Name (Typed)**

_____

Title **Date**

Appendix E

(Form E)

STATE JUSTICE INSTITUTE

LINE-ITEM BUDGET FORM

For Judicial Branch Education Technical Assistance and Technical Assistance Grant Requests*

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$ 0	$ 0	$ 0

PROJECT TOTAL $ 0

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Appendix F

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____

6. Email Address: _____

7. Congressional District: _____

PROGRAM INFORMATION:

☐ On-site ☐ Online

8. Course Name: _____

9. Course Dates: _____

10. Course Provider: _____

11. Location Offered: _____

ESTIMATED EXPENSES:

Please note: Scholarships are limited to tuition (excluding the conference fee), reasonable lodging up to $150 per night (including taxes), and transportation expenses to and from the site of the course, up to a maximum of $1,500.

Tuition: $ _____ Transportation: $ _____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: $ _____ Total Amount Requested: $ 0.00

Are you seeking/have you received a scholarship for this course from another source?

☐ Yes ☐ No If so, please specify the source(s) and amount(s) _____

_____

Form S1 (9/05)

SJI SCHOLARSHIP APPLICATION PAGE 2

ADDITIONAL INFORMATION:

Please attach a current resume or professional summary, and provide the information requested below.
(You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

☐ 0–1 year ☐ 2–4 years ☐ 5–7 years ☐ 8–10 years ☐ 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ _____
Signature Date

Please return this form and Form S-2 to:

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

SJI Scholarship Application

Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____,

prepared by _____.
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature

_____
Name

_____
Title

_____
Date

Form S2 (9/98)

[FR Doc. 05–23542 Filed 12–2–05; 8:45 am]
BILLING CODE 6820–SC–C

Federal Register

Monday,
December 5, 2005

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 655

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H–1B1 Visas in Specialty Occupations; Filing Procedures; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB39

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H–1B1 Visas in Specialty Occupations; Filing Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (the Department or DOL) is amending its regulations related to the H–1B and H–1B1 programs to generally require employers to use Web-based electronic filing of labor condition applications (LCAs). This final rule also implements technical and clarifying amendments to ETA's H–1B and H–1B1 regulations to correct terminology and addresses, update internal agency procedures, and clarify text. Among these amendments are provisions to reflect Congressional reinstatement of certain attestations and obligations applicable to employers that are H–1B dependent or have committed willful violations of H–1B requirements.

DATES: *Effective Date:* This final rule is effective on January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Rachel Wittman, Senior Policy Advisor, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone: (202) 693–3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION

I. Introduction

On April 1, 2005, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) to amend its regulations related to the H–1B and H–1B1 programs to generally require employers to use Web-based electronic filing of labor condition applications (LCAs). The NPRM also proposed technical and clarifying amendments to ETA's H–1B and H–1B1 regulations to correct terminology and addresses, update internal agency procedures, and clarify text. Among those proposed amendments were provisions to reflect Congressional reinstatement of certain attestation obligations applicable to employers that are H–1B dependent or have committed willful violations of H–1B requirements. 70 FR 16774 (April 1, 2005). Public comments were invited through May 2, 2005.

II. Statutory Authority and Background

The Immigration and Nationality Act, as amended, (INA or Act) assigns responsibilities to the Department relating to the entry and employment in the United States of certain categories of employment-based immigrants and nonimmigrants, including under the H–1B and H–1B1 visas. *See* INA § 101 *et seq.* [8 U.S.C. 1101 *et seq.*].

The H–1B visa program permits admission to the United States, on a nonimmigrant basis, of foreign workers who will temporarily perform services in a specialty occupation or as a fashion model of distinguished merit and ability. *See* 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184(c), (g), and (i). Specialty occupations under the H–1B program are those requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. 8 U.S.C. 1184(i)(1).

The H–1B1 visa was created on January 1, 2004, as part of Congress' approval of the United States-Chile Free Trade Agreement and the United States-Singapore Free Trade Agreement. The visa permits the temporary entry and employment in the United States of professionals in specialty occupations from countries with which the United States has entered into agreements identified in section 1184(g)(8)(A) of the Immigration and Nationality Act. *See* INA, 8 U.S.C. 1101(a)(15)(H)(i)(b1), 1182(t), 1184(g)(8)(A), and 1184(i). The statute now covers nationals of Chile and Singapore. 8 U.S.C. 1184(g)(8)(A). Under the INA amendments creating the H–1B1 visa, the Department of Labor's responsibilities regarding H–1B1 visas are required to be implemented in a manner similar to the H–1B program. To implement the H–1B1 program in accordance with statutory requirements, on November 23, 2004, DOL issued an interim final rule extending the H–1B regulations found at 20 CFR part 655, subparts H and I, to the H–1B1 program, with limited exceptions consistent with statutory requirements. *See* 69 FR 68222 (November 23, 2004). (Prior to publication of the H–1B1 Interim Final Rule, DOL conducted its H–1B1 responsibilities in accordance with the statute and procedures posted on the DOL Web site prior to the H–1B1 visa effective date of January 1, 2004.)

Before H–1B or H–1B1 status for a foreign worker will be approved by the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS),[1] the Secretary of Labor must certify a ''labor condition application'' or LCA filed by the foreign worker's prospective employer. *See* 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n) and (t); 20 CFR part 655, subpart H. In completing the ''labor condition application'' or LCA in paper form (Form ETA 9035) or electronic form (Form ETA 9035E), an employer must specifically indicate, among other things, the H–1B or H–1B1 nonimmigrant's prospective job title, the number of H–1B or H–1B1 nonimmigrants sought, the nonimmigrant's anticipated period of employment and rate of pay, and the location where the H–1B or H–1B1 nonimmigrant(s) will work. Additionally, the employer attests to four statements:

1. H–1B or H–1B1 nonimmigrants will be paid at least the local prevailing wage or the actual wage level paid by the employer to others with similar experience and qualifications, whichever is higher;

2. The employment of H–1B or H–1B1 nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed;

3. There is not a strike or lockout in the course of a labor dispute in the occupation in which H–1B or H–1B1 nonimmigrants will be employed at the place of employment; and

4. Notice of the application has been provided to workers employed in the occupations in which H–1B or H–1B1 nonimmigrants will be employed. *See* 8 U.S.C. 1182(n)(1) and (t)(1); 20 CFR 655.705(c)(1), 655.730(d), 655.731 through 655.734; Forms ETA 9035E, 9035, and 9035CP (Cover Pages). While DOL administers and enforces the labor condition application portion of the H–1B and H–1B1 program, USCIS identifies and defines the occupations covered by the H–1B and H–1B1 category (except as already defined in the Chile and Singapore Free Trade

[1] *See* 6 U.S.C. 236(b), 552(d), and 557.

Agreements) and determines an alien's qualifications for such occupations.

Congress enacted the ''H–1B Visa Reform Act of 2004'' as part of the Consolidated Appropriations Act of 2005. *See* P.L. 108–447, 118 Stat. 2809, Division J, Title IV, Subtitle B (December 8, 2004). Among other provisions, the H–1B Visa Reform Act reinstated, effective March 8, 2005, special attestation requirements for employers who are H–1B dependent or who have been found to have committed willful violations of H–1B requirements or misrepresentations of a material fact during the five-year period prior to filing an H–1B LCA. *See* P.L. 108–447 at Division J, § 422(a). Reinstatement was achieved by deleting from INA Section 212(n)(1)(E)(ii) the sunset date of October 1, 2003, previously applicable to the H–1B dependent employer and willful violator provisions. Pursuant to this INA amendment, H–1B dependent employers and willful violator employers who file H–1B applications after March 7, 2005, generally must attest: The employer did not displace and will not displace a U.S. worker within the period of 90 days before and after filing a petition for an H–1B nonimmigrant; the employer will not place H–1B nonimmigrants with a secondary employer unless the employer has inquired if the secondary employer has displaced or intends to displace a U.S. worker within the period of 90 days before and after the placement of the H–1B nonimmigrant; the employer took good faith steps prior to filing the H–1B application to recruit U.S. workers; and, finally, the employer has offered the job to any U.S. applicant who is equally or better qualified than the H–1B nonimmigrant for the job.

III. Overview of Regulatory Changes

The regulatory changes are summarized below. See the NPRM at 70 FR 16776 for a more detailed discussion of the regulatory changes, including the Department's rationale for proposing the changes.

This final rule requires electronic filing and processing of H–1B and H–1B1 labor condition applications (LCAs) except in limited circumstances where a physical disability or lack of Internet access prevents the employer from filing electronically. This transition to primarily electronic filing will reduce paper-based LCA filings now submitted by U.S. Mail and facsimile. No changes are made through this final rule to the existing LCA forms (Forms ETA 9035, 9035E, and 9035CP) or to the current electronic filing procedures. This final rule amends the H–1B and H–1B1 regulations at §§ 655.700, 655.705, 655.720, 655.730 and 655.760 to state the requirements of electronic filing, except in limited circumstances, and to remove references to filing by facsimile and/or U.S. Mail.

In addition to the proposed regulatory changes to institute a general requirement for electronic filing of LCAs, this final rule also contains a number of technical amendments to ETA's H–1B and H–1B1 regulations to correct terminology and addresses, update internal agency procedures, and clarify text. Specifically, this final rule amends the definition of the Immigration and Naturalization Service (INS) at § 655.715 to reflect that INS'' functions in relation to H–1B visas now are performed by the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security. The § 655.715 definition of State Employment Security Agency or SESA is also amended to reflect these state agencies now are known as ''State Workforce Agencies'' or SWAs.

This final rule also amends the H–1B and H–1B1 regulations at §§ 655.715, 655.720, 655.721, and 655.740 to remove references to the previous role of ''Regional Certifying Officers'' and ETA's Regional Offices in processing labor condition applications and taking other actions regarding LCAs. These regulatory references are unnecessary and are deleted, because ETA Regional Offices no longer process LCAs. This final rule also amends § 655.720(e) (previously § 655.720(d)) to reflect the ETA National Office, not ETA Regional Offices, handles matters regarding the H–1B and H–1B1 programs, and to provide a clearer reference to the regulatory section that identifies how employers may challenge state prevailing wage determinations. Consistent with the deletion of references to a role regarding LCAs for ETA Regional Offices, this final rule removes § 655.721, which currently provides the addresses of ETA Regional Offices.

A number of amendments are included in this final rule to reflect Congress' reinstatement, effective March 8, 2005, of special attestation requirements for employers who are H–1B dependent or willful violators. As discussed in Section I above, these special attestation requirements expired on September 30, 2003. Provisions reflecting the responsibility of employers who file applications regarding H–1B nonimmigrants (but not regarding H–1B1 nonimmigrants) to provide information regarding H–1B dependent status and these special attestations are found at §§ 655.705(c)(1), 655.730(c)(2), (c)(4)(vii), and (d)(5), and 655.736(c), (g)(1), (g)(2) and (g)(3). As reflected in these sections, the special attestation requirements for H–1B dependent employers and willful violators apply to H–1B labor condition applications filed with the Department on or after March 8, 2005. These special attestation requirements do not apply to H–1B labor condition applications filed from October 1, 2003 through March 7, 2005, or before January 19, 2001. An LCA filed during a period when the special attestation obligations for H–1B dependent employers and willful violators were not in effect (that is prior to January 19, 2001, and from October 1, 2003 through March 7, 2005) may not be used by an H–1B dependent employer or willful violator to support either petitions for new H–1B nonimmigrants or requests for extensions of status for existing H–1B nonimmigrants.

Additionally, the following sections are revised to reflect address changes: (1) in § 655.710(b) and § 655.734(a)(1)(ii), the address for filing complaints with the Department of Justice arising under 8 U.S.C. 1182(n)(1)(G)(i)(II) of the INA; (2) in § 655.720(c) (previously § 655.720(b)), the address for filing LCAs by U.S. Mail; and (3) in § 655.750(b)(2), the address for withdrawing previously filed LCAs. In the case of both the address for filing LCAs by U.S. Mail (§ 655.720(c)) and for withdrawing previously filed LCAs (§ 655.750(b)(2)), because ETA anticipates addresses may change over time, the final rule provides that addresses will be published in a notice in the **Federal Register** and posted on DOL's Web site at *http://www.ows.doleta.gov/foreign/*.

Finally, where regulatory sections or subsections are amended to reflect the e-filing requirement, these sections have been edited for clarity and to update terminology, such as replacing INS with USCIS.

IV. Discussion of Comments

The Department invited comments on the proposed elimination of options to file LCAs for the H–1B and H–1B1 programs by U.S. Mail and facsimile and the requirement of employers to file electronically except in limited circumstances. The Department also stated it was particularly interested in receiving comments from small business entities on this proposal.

Four comments were received. One was received from an employer, one from the American Immigration Lawyers Association (AILA) and two from practicing attorneys. No comments

were received from small business entities on the Department's proposal to require employers to file electronically.

Two commenters offered some support for the proposed rule. AILA stated: ''In general AILA applauds the Department for its efforts to streamline the filing of Labor Condition Applications online, which is at the heart of the proposed regulation. Such a modification to the LCA program recognizes the need to replace inefficient procedures—mailed or faxed applications—with new procedures that take into account modern business practices.'' However, as discussed below, AILA was also concerned there were some employers lacking Internet access and some ''older employer representatives'' who would find online submission of LCAs troublesome.

The Microsoft Corporation stated it ''applauds the DOL in its proposal to dispense with paper submission of LCAs'' and the ''proposed rule is a welcome step in automating the filing and adjudication of immigration-related government forms.'' However, as discussed below, Microsoft was concerned the rule does not adequately detail privacy and security provisions.

One attorney commenter objected to the provision in § 655.730(b) that precludes the submission of on-line LCAs more than 6 months in advance of the beginning date of the period of intended employment shown on the LCA. The commenter maintained in many instances not all information is available to prepare an on-line LCA and employer representatives file a facsimile LCA to enable them to secure the missing information from the employer and the employer's required signature at the same time. The thrust of the comment appeared to be that by filing an incomplete LCA more than 6 months in advance of the date of need, the employer would maintain its place in line for obtaining a certified LCA and filing a petition with USCIS. Such a practice would be contrary to the Department's regulations and current administrative practice. The current regulation at § 655.30(b) contains substantively the same provision as the proposed rule regarding the earliest point in time at which an LCA may be filed (*i.e.*, no more than 6 months in advance of the beginning date for employment), and this restriction applies to applications submitted by facsimile, U.S. Mail, and electronically. The existing regulations also state it is the employer's responsibility to ensure that a complete and accurate LCA is received by ETA. *See* § 655.730(b). The Department will not certify applications, whether complete or incomplete, submitted more than 6 months in advance of the first date of need. The Department returns such prematurely filed applications to the employer in accordance with 20 CFR 656.740(a)(2)(ii). It should also be noted the current USCIS regulation at 8 CFR 214.2(h)(9)(B) provides: ''(t)he petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services or training.'' Accordingly, the Department has not made any changes in the final rule to the provision at § 655.730(b) which provides, in relevant part, that ''(a)n LCA shall be submitted by the employer to ETA in accordance with the procedure prescribed in § 655.720 no earlier than six months before the beginning date of the period intended employment shown on the LCA.''

AILA was concerned there were some employers and attorneys seeking H–1B or H–1B1 visas that lack computer and Internet access. AILA hypothesized that a ''small'' group of recent immigrants who are themselves entrepreneurs seeking to augment their businesses with the help of key H–1B or H–1B1 professionals have neither the technical need for Internet access in their business nor the ability to go to their local libraries during business hours to file LCAs, maintain LCA accounts, and withdraw LCAs when necessary. The end result of the NPRM's proposed requirement of electronic filing, according to AILA, would be to cut such employers out of the H–1B and H–1B1 process entirely.

We think it is highly unlikely that employers using the H–1B or H–1B1 program for professionals in ''specialty occupations'' (and under H–1B, models ''of distinguished merit and ability'') lack computer and Internet access. AILA did not identify any specific immigrant entrepreneur using the H–1B or H–1B1 program without Internet access, and no such entrepreneur, employer, or employer's representative provided comments regarding Internet access, although the preamble to the proposed rule noted that the Department was particularly interested in receiving comments from small business entities. Nor have we encountered in our program experience such employers or agents using the H–1B or H–1B1 program and yet lacking Internet access. Further, as pointed out in the preamble to the proposed rule, a high percentage, if not most, of the positions sought by H–1B employers are in information, computer, and other high technology fields (see 70 FR at 16776), and the Department believes it highly unlikely that employers seeking H–1B workers in information, computers, and other high technology fields would not have access to computers or the Internet.

However, in the spirit of caution, the Department is making a special mail filing procedure available to employers without Internet access as well as to employers with physical disabilities. Under the new procedures set forth in § 655.720(c) employers may petition the Department for approval to submit their LCAs by U.S. Mail instead of the electronic filing system by submitting a written request to the Chief, Division of Foreign Labor Certification. The employer cannot submit an LCA by U.S. Mail until its request is approved. Approval of an employer request to submit LCAs by U.S. Mail shall be good for one year from the date it is granted.

AILA also asserted in its comments that ''the spirit of the Government Paperwork Elimination Act ('GPEA') seeks not to restrict access to government programs but to enhance access.'' AILA also contended that Section 1704 of GPEA ''requires federal agencies to allow entities that deal with an agency the 'option' * * * to submit information or perform transactions with an agency electronically, 'when practicable,' '' but also ''directs'' (emphasis added) agencies not to limit communications ''only to electronic submissions or transactions.'' The Department agrees that GPEA is intended to enhance access to government programs, but disagrees with AILA's interpretation that GPEA forbids Federal agency use of electronic only information submission mechanisms. Rather, Congress enacted GPEA in 1998 to promote government use of electronic systems for submitting and disclosing information, at a time when Internet use was just becoming widespread. GPEA does not address whether electronic-only mechanisms are permissible. In any case, the Department believes this final rule enhances access to the H–1B and H–1B1 programs. As described in the preamble to the NPRM, by moving to an all-electronic system for receiving and adjudicating H–1B and H–1B1 labor condition applications, the Department will create a more responsive and efficient process. The Department believes all-electronic filing will limit incomplete applications, permit more efficient processing of LCAs and allow ETA to better capture statistics and analyze data related to the H–1B and H–1B1 programs. In any case, as noted above, the Department has decided to make a special mail-filing procedure available to employers without Internet access as well as to employers with physical disabilities.

AILA also hypothesized there are some ''older employer representatives''

who have ''fallen behind in technical prowess'' and who would find electronic submission of H–1B or H–1B1 applications to be a daunting task. In the Department's opinion, the electronic system with its detailed instructions, prompts and checks to assist employers or their representatives in completing the ETA 9035E is less daunting than a hard copy submission of the paper Form 9035. The provision in the electronic system of detailed instructions, prompts and checks makes it less likely mistakes will be made that could result in denial of an LCA. Moreover, as discussed above, this final rule provides a procedure at § 655.20(c) through which an employer with a physical disability that prevents use of the electronic filing system, or an employer lacking access to the Internet, may petition the Department for approval to submit LCAs by U.S. Mail.

Four comments were submitted that are outside the scope of the proposed rule. These comments did not address the proposed elimination of U.S. Mail and facsimile filings, but rather focused on provisions of the regulations to which we did not propose any substantive changes. Two commenters objected to the provision in § 655.750(a) that ''in the event employment pursuant to Section 214(n) of the INA (formerly Section 214(m), addressing increased portability of H–1B status) commences prior to certification of the labor certification application, the attestation requirements of the subsequently certified application shall apply back to the first date of employment.'' The NPRM included no substantive changes to the current regulation regarding Section 214(n), and instead merely updated the statutory citation, and, for clarity, identified the subject matter. Although these comments are outside the NPRM's scope, the Department notes that, based on preliminary discussion with USCIS staff, we have concluded this provision in the regulations should be retained. Accordingly, this final rule continues the language from the current regulations providing that, in the case of employment pursuant to INA Section 214(n), attestations shall apply back to the first date of employment.

In another comment outside the scope of the NPRM, the Microsoft Corporation urged the Department to disclose its precautions to protect data privacy and how DOL imposes sanctions under existing law in cases of disclosure or dissemination in violation of law of electronic data submitted in an online LCA. Microsoft further opposed the publication of H–1B data taken from submitted LCAs that is posted on the Internet at *http://www.flcdatacenter.com/CaseH1B.aspx.* Although the Department considers this comment to be outside the scope of the proposed rule, the Department notes it considers the online system for submitting LCAs to be in conformity with all standards for data security and data privacy that are issued by the National Institute of Standards and Technology and the Department of Labor. Further, the Department has determined that none of the information it posts at the Web address listed above is protected under the Freedom of Information Act or the Privacy Act.

Finally, AILA noted in its comments that it had previously submitted comments on the special attestation requirements regarding H–1B dependent employers and willful violators when they were first promulgated in the current H–1B interim final rule. See 65 FR 80110 (December 20, 2000) (interim final rule). We do not consider this final AILA comment to be within the scope of the NPRM published in the **Federal Register** on April 1, 2005. The NPRM and this final rule identify the period during which the special attestations apply, consistent with the latest Congressional reinstatement of these provisions, but do not address the substance of these special attestation requirements.

V. Administrative Information

Executive Order 12866—Regulatory Planning and Review: This final rule is significant, although not ''economically significant'' within the meaning of Executive Order 12866. The final rule therefore has been reviewed by the Office of Management and Budget (OMB). The requirement for all-electronic filing (except in limited circumstances) of H–1B and H–1B1 labor condition applications, and corresponding elimination of U.S. Mail or facsimile filing options, will not have an economic impact of $100 million or more because this will not alter the required forms or attestations for labor condition applications, but rather merely alters the method of filing for a small portion of participating employers. The final rule will alter the filing mechanism for less than 10 percent of the LCAs filed in FY 2004, namely those filed by means other than electronic filing. While employers previously filing by facsimile or U.S. Mail will have to change to electronic filing, they will be moving to a more efficient and rapid processing procedure.

Regulatory Flexibility Act: We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

The factual basis for that certification is as follows: Based on past filing data, ETA estimates in the upcoming year employers will file approximately 341,000 attestations under the H–1B and H–1B1 program as a whole. (Since the H–1B program's inception, the number of H–1B attestations has exceeded the initial H–1B visas available each year; for example, for Fiscal Year 2004, about 341,000 attestations covering 652,000 job openings were certified even though only 65,000 initial H–1B visas were available that year.) This includes approximately 385 H–1B1 LCAs filed with ETA during FY 2004. Some employers will file multiple attestations in a year. We do not inquire about the size of employers filing labor attestations; however, the number of small entities that file attestations in the upcoming year will be less than the expected total of 341,000 applications and significantly below the potential universe of small businesses to which the program is available. Because applications come from employers in all industry segments, we consider all small businesses as the appropriate universe for comparison purposes. According to information provided on the Small Business Administration, Office of Advocacy Web site at *http://sba.gov/advo/,* small firms with less than 500 employees represent 99.7 percent, or 23,628,000, of the approximately 23,700,000 businesses in the United States. Thus in comparison to the universe of all small businesses, the expected 341,000 applications represent approximately 1.44% of all small businesses. The Department of Labor asserts a small business pool of less than 1.44% does not represent a substantial proportion of small entities.

In any case, the Department of Labor does not believe this final rule will have a significant economic impact on employers, large or small, using the H–1B and H–1B1 programs. This final rule does not alter the required forms or attestations for labor condition applications, but rather requires all-electronic filing of LCAs (except in limited circumstances). The final rule will alter the filing mechanism for less than 10 percent of the LCAs filed in FY 2004, namely those filed by means other than electronic filing. While employers previously filing by facsimile or U.S. Mail will have to change to electronic filing, they will be moving to a more

efficient and rapid processing procedure.

Unfunded Mandates Reform Act of 1995: This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996: This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. Because we certified this final rule is not an economically significant rule under Executive Order 12866, we certify it also is not a major rule under SBREFA. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: This final rule will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform: This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act: The collection of information under 20 CFR part 655, subpart H, is currently approved under OMB control number 1205–0310. This final rule does not include a substantive or material modification of that collection of information. Forms ETA 9035 and 9035E are not being changed by this final rule and both will remain in use. Accordingly, the Department believes the Paperwork Reduction Act is inapplicable to this final rule.

Catalog of Federal Domestic Assistance Number: This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.252, ''Attestations by Employers Using Non-Immigrant Aliens in Specialty Occupations.''

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Chile, Employment, Forest and forest products, Health professions, Immigration, Labor, Longshore work, Migrant labor, Penalties, Reporting requirements, Singapore, Students, Wages.

■ Accordingly, for the reasons stated in the Preamble, 20 CFR part 655, subpart H, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart H—Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H–1B1 Visas in Specialty Occupations

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 *et seq.*

■ 2. Section 655.700 is amended by revising paragraph (b)(1) and, in paragraph (d)(1), by revising the first sentence, to read as follows:

§ 655.700 What statutory provisions govern the employment of H–1B and H–1B1 nonimmigrants and how do employers apply for an H–1B or H–1B1 visa?

* * * * *

(b) * * *

(1) First, an employer shall submit to the Department of Labor (DOL), and obtain DOL certification of, a labor condition application (LCA). The requirements for obtaining a certified LCA are provided in this subpart. The electronic LCA (Form ETA 9035E) is available at *http://www.lca.doleta.gov.* The paper-version LCA (Form ETA 9035) and the LCA cover pages (Form ETA 9035CP), which contain the full attestation statements incorporated by reference into Form ETA 9035 and Form ETA 9035E, may be obtained from *http://ows.doleta.gov* and from the Employment and Training Administration (ETA) National Office. Employers must file LCAs in the manner prescribed in § 655.720.

* * * * *

(d) *Nonimmigrants on H–1B1 visas—*

(1) *Exclusions.* The following sections and portions of sections in this subpart and in subpart I of this part do not apply to H–1B1 nonimmigrants but apply only to H–1B nonimmigrants: Sections 655.700(a), (b), (c)(1) and (c)(2); 655.705(b) and (c); 655.710(b); 655.730(d)(5) and (e)(3); 655.736; 655.737; 655.738; 655.739; 655.760(a)(8), (9) and (10); and 655.805(a)(7), (8) and (9). * * *

* * * * *

■ 3. Section 655.705 is amended by revising the section heading, paragraphs (c) introductory text and (c)(1) to read as follows:

§ 655.705 What Federal agencies are involved in the H–1B and H–1B1 programs, and what are the responsibilities of those agencies and of employers?

* * * * *

(c) *Employer's Responsibilities.* This paragraph applies only to the H–1B program; employer responsibilities under the H–1B1 program are found at § 655.700(d)(4). Each employer seeking an H–1B nonimmigrant in a specialty occupation or as a fashion model of distinguished merit and ability has several responsibilities, as described more fully in this subpart and subpart I of this part, including:

(1) The employer shall submit a completed labor condition application (LCA) on Form ETA 9035E or Form ETA 9035 in the manner prescribed in § 655.720. By completing and submitting the LCA, and by signing the LCA, the employer makes certain representations and agrees to several attestations regarding its responsibilities, including the wages, working conditions, and benefits to be provided to the H–1B nonimmigrants (8 U.S.C. 1182(n)(1)); these attestations are specifically identified and incorporated by reference in the LCA, as well as being set forth in full on Form ETA 9035CP. The LCA contains additional attestations for certain H–1B-dependent employers and employers found to have willfully violated the H–1B program requirements; these attestations impose certain obligations to recruit U.S. workers, to offer the job to U.S. applicants who are equally or better qualified than the H–1B nonimmigrant(s) sought for the job, and to avoid the displacement of U.S. workers (either in the employer's workforce, or in the workforce of a second employer with whom the H–1B nonimmigrant(s) is placed, where there are indicia of employment with a second employer (8 U.S.C. 1182(n)(1)(E)–(G)). These additional attestations are specifically identified and incorporated by reference in the LCA, as well as being set forth in full on Form ETA 9035CP. If ETA certifies the LCA, notice of the certification will be sent to the employer by the same means the employer used to submit the LCA (that is, electronically where the Form ETA 9035E was submitted electronically, and by U.S. Mail where the Form ETA 9035 was submitted by U.S. Mail). The employer reaffirms its acceptance of all of the attestation obligations by submitting the LCA to the U.S. Citizenship and Immigration Services (formerly the Immigration and Naturalization Service or INS) in support of the Petition for Nonimmigrant Worker, Form I–129, for an H–1B nonimmigrant. See 8 CFR 214.2(h)(4)(iii)(B)(2), which specifies the employer will comply with the terms of the LCA for the duration of the H–1B nonimmigrant's authorized period of stay.

* * * * *

■ 4. Section 655.710 is amended by revising paragraph (b) to read as follows:

§ 655.710 What is the procedure for filing a complaint?

* * * * *

(b) Complaints arising under section 212(n)(1)(G)(i)(II) of the INA, 8 U.S.C. 1182(n)(1)(G)(i)(II), alleging failure of the employer to offer employment to an equally or better qualified U.S. applicant, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW., Washington, DC 20530, Telephone: 1–800–255–8155 (employers), 1–800–255–7688 (employees); Web address: *http://www.usdoj.gov/crt/osc.* The Department of Justice shall investigate where appropriate, and take action as appropriate under that Department's regulations and procedures.

■ 5. Section 655.715 is amended by revising the definitions of *Certifying Officer and Regional Certifying Officer, Immigration and Naturalization Service,* and *State Employment Security Agency* to read as follows:

§ 655.715 Definitions.

* * * * *

Certifying Officer means a Department of Labor official, or such official's designee, who makes determinations about whether or not to certify labor condition applications.

* * * * *

Immigration and Naturalization Service (INS), now known as United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security, means the Federal entity that makes the determination under the INA on whether to grant visa petitions of employers seeking the admission of nonimmigrants under H–1B visas for the purpose of employment.

* * * * *

State Employment Security Agency (SESA), now known as a State Workforce Agency (SWA), means the state agency designated under section 4 of the Wagner-Peyser Act to cooperate with the Employment and Training Administration of the Department of Labor in the operation of the national public workforce system.

* * * * *

■ 6. Section 655.720 is revised to read as follows:

§ 655.720 Where are labor condition applications (LCAs) to be filed and processed?

(a) Employers must file all LCAs regarding H–1B and H–1B1 nonimmigrants through the electronic submission procedure identified in paragraph (b) of this section except as provided in the next sentence. If a physical disability or lack of access to the Internet prevents an employer from using the electronic filing system, an LCA may be filed by U.S. Mail in accordance with paragraphs (c) and (d) of this section. Requirements for signing, providing public access to, and use of certified LCAs are identified in § 655.730(c). If the LCA is certified by DOL, notice of the certification will be sent to the employer by the same means that the employer used to submit the LCA, that is, electronically where the Form ETA 9035E was submitted electronically, and by U.S. Mail where the Form ETA 9035 was submitted by U.S. Mail.

(b) *Electronic submission.* Employers must file the electronic LCA, Form ETA 9035E, through the Department of Labor's Web site at *http://www.lca.doleta.gov.* The employer must follow instructions for electronic submission posted on the Web site. In the event ETA implements the Government Paperwork Elimination Act (*44 U.S.C.A. 3504* n.) and/or the Electronic Records and Signatures in Global and National Commerce Act (E–SIGN) (*15 U.S.C. 7001–7006*) for the submission and certification of the Form ETA 9035E, instructions will be provided (by public notice(s) and by instructions on the Department's Web site) to employers as to how the requirements of these statutes will be met in the Form ETA 9035E procedures.

(c) *Approval to file LCAs by U.S. Mail.* (1) Employers with physical disabilities or lacking Internet access and wishing to file LCAs by U.S. Mail may submit a written request to the Chief, Division of Foreign Labor Certification in accordance with paragraphs (c)(2) through (c)(4) of this section. The ETA shall identify the address to which such written request shall be mailed in a Notice in the **Federal Register** and on the Department's Web site at *http://www.lca.doleta.gov.*

(2) The written request must establish the employer's need to file by U.S. Mail, including providing an explanation of how physical disability or lack of access to the Internet prevents the employer from using the electronic filing system. No particular form or format is required for this request.

(3) ETA will review the submitted justification, and may require the employer to submit supporting documentation. In the case of employers asserting a lack of Internet access, supporting documentation could, for example, consist of documentation that the Internet cannot be accessed from the employer's worksite or physical location (for example because no Internet service provider serves the site), and there is no publicly available Internet access, at public libraries or elsewhere, within a

reasonable distance of the employer. In the case of employers with physical disabilities supporting documentation could, for example, consist of physicians' statements or invoices for medical devices or aids relevant to the employer's disability.

(4) ETA may approve or deny employers' requests to submit LCAs by U.S. Mail. Approvals shall be valid for 1 year from the date of approval.

(d) *U.S. Mail.* If an employer has a valid approval to file by U.S. Mail in accordance with paragraph (c) of this section, the employer may use Form ETA 9035 and send it by U.S. Mail to ETA. ETA shall publish a Notice in the **Federal Register** identifying the address, and any future address changes, to which paper LCAs must be mailed, and shall also post these addresses on the DOL Internet Web site at *http://www.lca.doleta.gov.* When Form ETA 9035 is submitted by U.S. Mail, the form must bear the original signature of the employer (or that of the employer's authorized agent or representative) at the time it is submitted to ETA.

(e) The ETA National Office is responsible for policy questions and other issues regarding LCAs. Prevailing wage challenges are handled in accordance with the procedures identified in § 655.731(a)(2).

§ 655.721 [Removed and Reserved]

■ 7. Section 655.721 is removed and reserved.

■ 8. Section 655.730 is amended by revising paragraphs (b), (c), and (d)(5) to read as follows:

§ 655.730 What is the process for filing a labor condition application?

* * * * *

(b) *Where and when is an LCA to be submitted?* An LCA shall be submitted by the employer to ETA in accordance with the procedure prescribed in § 655.720 no earlier than six months before the beginning date of the period of intended employment shown on the LCA. It is the employer's responsibility to ensure ETA receives a complete and accurate LCA. Incomplete or obviously inaccurate LCAs will not be certified by ETA. ETA will process all LCAs sequentially and will usually make a determination to certify or not certify an LCA within seven working days of the date ETA receives the LCA. LCAs filed by U.S. Mail may not be processed as quickly as those filed electronically.

(c) *What is to be submitted and what are its contents?* Form ETA 9035 or ETA 9035E.

(1) *General.* The employer (or the employer's authorized agent or representative) must submit to ETA one completed and dated LCA as prescribed in § 655.720. The electronic LCA, Form ETA 9035E, is found on the DOL Web site where the electronic submission is made, at *http://www.lca.doleta.gov.* Copies of the paper form, Form ETA 9035, and cover pages Form ETA 9035CP are available on the DOL Web site at *http://www.ows.doleta.gov* and from the ETA National Office, and may be used by employers with approval under § 655.720 to file by U.S. Mail during the approval's validity period.

(2) *Undertaking of the Employer.* In submitting the LCA, and by affixing the signature of the employer or its authorized agent or representative on Form ETA 9035E or Form ETA 9035, the employer (or its authorized agent or representative on behalf of the employer) attests the statements in the LCA are true and promises to comply with the labor condition statements (attestations) specifically identified in Forms ETA 9035E and ETA 9035, as well as set forth in full in the Form ETA 9035CP. The labor condition statements (attestations) are described in detail in §§ 655.731 through 655.734, and the additional attestations for LCAs filed by certain H–1B-dependent employers and employers found to have willfully violated the H–1B program requirements are described in §§ 655.736 through 655.739.

(3) *Signed Originals, Public Access, and Use of Certified LCAs.* In accordance with § 655.760(a) and (a)(1), the employer must maintain in its files and make available for public examination the LCA as submitted to ETA and as certified by ETA. When Form ETA 9035E is submitted electronically, a signed original is created by the employer (or by the employer's authorized agent or representative) printing out and signing the form immediately upon certification by ETA. When Form ETA 9035 is submitted by U.S. Mail as permitted by § 655.720(a), the form must bear the original signature of the employer (or of the employer's authorized agent or representative) when submitted to ETA. For H–1B visas only, the employer must submit a copy of the signed, certified Form ETA 9035 or ETA 9035E to the U.S. Citizenship and Immigration Services (USCIS, formerly INS) in support of the Form I–129 petition, thereby reaffirming the employer's acceptance of all of the attestation obligations in accordance with 8 CFR 214.2(h)(4)(iii)(B)(2).

(4) *Contents of LCA.* Each LCA shall identify the occupational classification for which the LCA is being submitted and shall state:

(i) The occupation, by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;

(ii) The number of nonimmigrants sought;

(iii) The gross wage rate to be paid to each nonimmigrant, expressed on an hourly, weekly, biweekly, monthly, or annual basis;

(iv) The starting and ending dates of the nonimmigrants' employment;

(v) The place(s) of intended employment;

(vi) The prevailing wage for the occupation in the area of intended employment and the specific source (*e.g.*, name of published survey) relied upon by the employer to determine the wage. If the wage is obtained from a SESA, now known as a State Workforce Agency (SWA), the appropriate box must be checked and the wage must be stated; the source for a wage obtained from a source other than a SWA must be identified along with the wage; and

(vii) For applications filed regarding H–1B nonimmigrants only (and not applications regarding H–1B1 nonimmigrants), the employer's status as to whether or not the employer is H–1B-dependent and/or a willful violator, and, if the employer is H–1B-dependent and/or a willful violator, whether the employer will use the application only in support of petitions for exempt H–1B nonimmigrants.

(5) *Multiple positions and/or places of employment.* The employer shall file a separate LCA for each occupation in which the employer intends to employ one or more nonimmigrants, but the LCA may cover more than one intended position (employment opportunity) within that occupation. All intended places of employment shall be identified on the LCA; the employer may file one or more additional LCAs to identify additional places of employment. Separate LCAs must be filed for H–1B and H–1B1 nonimmigrants.

(6) *Full-time and part-time jobs.* The position(s) covered by the LCA may be either full-time or part-time; full-time and part-time positions can not be combined on a single LCA.

(d) *What attestations does the LCA contain?* * * *

* * * * *

(5) For applications filed regarding H–1B nonimmigrants only (and not regarding H–1B1 nonimmigrants), the employer has determined its status concerning H–1B-dependency and/or willful violator (as described in § 655.736), has indicated such status, and if either such status is applicable to

the employer, has indicated whether the LCA will be used only for exempt H–1B nonimmigrant(s), as described in § 655.737.

* * * * *

§ 655.734 [Amended]

■ 9. Section 655.734 is amended in paragraph (a)(1)(ii) by removing the phrase ''Complaints alleging failure to offer employment to an equally or better qualified U.S. worker, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with the Department of Justice, 10th Street and Constitution Avenue, NW., Washington, DC 20530'' and adding in lieu thereof the phrase ''Complaints alleging failure to offer employment to an equally or better qualified U.S. applicant or an employer's misrepresentation regarding such offers of employment may be filed with the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW., Washington, DC 20530, Telephone: 1 (800) 255–8155 (employers), 1 (800) 255–7688 (employees); Web address: *http://www.usdoj.gov/crt/osc.*''

■ 10. Section 655.736 is amended in paragraph (g)(1) by removing the phrase ''paragraph (2)(g) of this section'' where it appears and adding in lieu thereof the phrase ''paragraph (g)(2) of this section'' and by revising paragraphs (c) introductory text, (g)(2), and (g)(4) to read as follows:

§ 655.736 What are H–1B-dependent employers and willful violators?

* * * * *

(c) *Which employers are required to make determinations of H–1B-dependency status?* Every employer that intends to file an LCA regarding H–1B nonimmigrants or to file H–1B petition(s) or request(s) for extension(s) of H–1B status from January 19, 2001 through September 30, 2003, and after March 7, 2005, is required to determine whether it is an H–1B-dependent employer or a willful violator which, except as provided in § 655.737, will be subject to the additional obligations for H–1B-dependent employers (see paragraph (g) of this section). No H–1B-dependent employer or willful violator may use an LCA filed before January 19, 2001, and during the period of October 1, 2003 through March 7, 2005, to support a new H–1B petition or request for an extension of status. Furthermore, on all H–1B LCAs filed from January 19, 2001 through September 30, 2003, and on or after March 8, 2005, an employer will be required to attest whether it is an H–1B-dependent employer or willful violator. An employer that attests it is non-H–1B-dependent but does not meet the ''snap shot'' test set forth in paragraph (c)(2) of this section shall make and document a full calculation of its status. However, as explained in paragraphs (c)(1) and (2) of this section, which follow, most employers would not be required to make any calculations or to create any documentation as to the determination of their H–1B status.

* * * * *

(g) *What LCAs are subject to the additional attestation obligations?*

* * * * *

(2) During the period between January 19, 2001 through September 30, 2003, and on or after March 8, 2005, any employer that is ''H–1B-dependent'' (under the standards described in paragraphs (a) through (e) of this section) or is a ''willful violator'' (under the standards described in paragraph (f) of this section) shall file a new LCA accurately indicating that status in order to be able to file petition(s) for new H–1B nonimmigrant(s) or request(s) for extension(s) of status for existing H–1B nonimmigrant(s). An LCA filed during a period when the special attestation obligations for H–1B dependent employers and willful violators were not in effect (that is before January 19, 2001, and from October 1, 2003 through March 7, 2005) may not be used by an H–1B dependent employer or willful violator to support petition(s) for new H–1B nonimmigrant(s) or request(s) for extension(s) of status for existing H–1B nonimmigrants.

* * * * *

(4) The special provisions for H–1B-dependent employers and willful violator employers do not apply to LCAs filed from October 1, 2003 through March 7, 2005, or before January 19, 2001. However, all LCAs filed before October 1, 2003, and containing the additional attestation obligations described in this section and §§ 655.737 through 655.739, will remain in effect with regard to those obligations, for so long as any H–1B nonimmigrant(s) employed pursuant to the LCA(s) remain employed by the employer.

§ 655.740 [Amended]

■ 11. Section 655.740 is amended in paragraphs (a) introductory text and (a)(1) by removing the phrase ''regional Certifying Officer'' where it appears and adding in lieu thereof the phrase ''Certifying Officer,'' and in paragraph (a)(3) by removing the phrase ''the regional office'' and adding in lieu thereof ''ETA.''

■ 12. Section 655.750 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 655.750 What is the validity period of the labor condition application?

(a) *Validity of certified labor condition applications.* A labor condition application certified pursuant to the provisions of § 655.740 is valid for the period of employment indicated on Form ETA 9035E or ETA 9035 by the authorized DOL official. The validity period of a labor condition application will not begin before the application is certified and the period of authorized employment shall not exceed three years. However, in the event employment pursuant to section 214(n) of the INA (formerly section 214(m), addressing increased portability of H–1B status) commences prior to certification of the labor condition application, the attestation requirements of the subsequently certified application shall apply back to the first date of employment. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or three years, whichever comes first.

(b) *Withdrawal of certified labor condition applications.*

* * * * *

(2) Requests for withdrawals shall be in writing and shall be sent to ETA, Division of Foreign Labor Certification. ETA shall publish a Notice in the **Federal Register** identifying the address, and any future address changes, to which requests for withdrawals shall be mailed, and shall also post these addresses on the DOL Web site at *http://www.lca.doleta.gov.*

* * * * *

■ 13. Section 655.760 is amended by revising paragraph (a)(1) to read as follows:

§ 655.760 What records are to be made available to the public, and what records are to be retained?

(a) *Public examination.* * * *

(1) A copy of the certified labor condition application (Form ETA 9035E or Form ETA 9035) and cover pages (Form ETA 9035CP). If the Form ETA 9035E is submitted electronically, a printout of the certified application shall be signed by the employer and maintained in its files and included in the public examination file.

* * * * *

Signed in Washington, DC this 29th day of November, 2005.

Emily Stover DeRocco,

Assistant Secretary, , Employment and Training Administration.

[FR Doc. 05–23616 Filed 12–2–05; 8:45 am]

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Part IV

Securities and Exchange Commission

17 CFR Parts 200 and 201

Adoption of Amendments to the Rules of Practice and Related Provisions and Delegations of Authority of the Commission; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release No. 34–52846; File No. S7–05–05]

Adoption of Amendments to the Rules of Practice and Related Provisions and Delegations of Authority of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its Rules of Practice, certain related provisions, and its delegations of authority to the staff as a result of its experience with these rules and to correct typographical errors and change certain citations. The amendments are intended to enhance the transparency and facilitate parties' understanding of the rules and to make practice under the rules easier and more efficient.

DATES: Effective January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Diane V. White, Office of the General Counsel, (202) 551–5150, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9010.

SUPPLEMENTARY INFORMATION: On April 21, 2005, the Commission proposed amendments to the Rules of Practice.[1] The Commission proposed amendments to its Rules of Practice and related provisions as a result of the Commission's experience with its existing rules and in order to correct references and change certain citations. Additional amendments were proposed to correct typographical errors and change certain citations to conform to the amended rules. The majority of these proposals were technical and procedural.

I. Discussion

The Commission requested comment on the proposed amendments from interested persons. The Commission received no comments in response to its requests. The Commission is adopting the amendments to the Rules of Practice and related provisions, essentially as proposed.

A. Rule 141(a)(2)(ii) now generally authorizes service on other corporations or entities by delivering a copy of the order instituting proceedings (''OIP'') to an officer, managing or general agent, or authorized agent by personal service or by mail.[2] Particularly, in proceedings instituted under Section 12(j) of the Securities Exchange Act of 1934, 15 U.S.C. 78*l*(j), to revoke or suspend the registration of a class of securities for failure to make timely periodic filings, it sometimes has been difficult to serve the issuer of the securities. An issuer that is delinquent in its filings often does not keep current with the Commission the name of a valid agent to receive notice of the proceeding. In certain instances, the Commission's staff has sought to accomplish service on such an issuer by serving multiple copies of the OIP on various persons, such as the issuer's officers or directors.[3] The Commission is amending Rule 141(a)(2)(ii) to authorize service on an issuer at the most recent address set forth in its most recent filing with the Commission, with confirmation of attempted delivery.

The Commission also is adopting Rule 141(a)(2)(vi) to authorize service on persons registered with self-regulatory organizations at the most recent address shown in the Central Registration Depository, with confirmation of attempted delivery. We requested comment as to whether this method would provide adequate notice of a proceeding. We recognize that the Central Registration Depository requires that addresses be kept current for only two years after a person ceases to be associated with a member of a self-regulatory organization. We further requested comment as to whether the rule should refer explicitly to such a two-year period. However, we received no comment in response to either request. We have determined to adopt the amendments to the rule as proposed.

B. Currently, Rule 430(a) provides that any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–8 or §§ 200.30–11 through 200.30–18 may seek review of the action pursuant to Rule 430(b). Rule 430(b) now provides that Commission review is to be sought by filing a written notice of intention to petition for review within five days ''after actual notice to the party of the action or service of notice pursuant to § 201.141(b), whichever is earlier.'' Although the current rule permits appeals by any aggrieved person of action taken by delegated authority, an aggrieved person who is not a party may not receive actual notice or learn of service of notice promptly after the action. Nonetheless, it is important that a deadline for the filing of a notice of intention to petition for review be established, so it is possible to know when an action is beyond challenge. The amendment therefore provides that both parties and aggrieved persons may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice of the action to that party or aggrieved person, or 15 days after publication of the notice of action in the **Federal Register**, or five days after service of notice of the action pursuant to § 201.141(b), whichever is the earliest. The Commission requested comment on whether this form of publication would provide adequate notice, or whether another form of publication should be used to supplement the **Federal Register**. The Commission also sought comment on whether posting of a notice of action pursuant to delegated authority on the Commission's Web site would aid in giving notice to persons who might be aggrieved by such action. Although we received no comment in response to this request, the Commission intends to post, as appropriate, delegated actions on its Web site.[4] The Commission also requested comment as to whether 15 days after publication would allow parties and aggrieved persons sufficient time to file a notice.[5] Again, we received no comment. We have determined to adopt the rule as proposed.

C. Currently, Rule 55, which governs the conduct of Equal Access to Justice

[1] Proposed Amendments to the Rules of Practice and Related Provisions, Exchange Act Rel. No. 51595, 70 FR 22224 (Apr. 28, 2005).

[2] Rule 141(a)(2)(ii) states that notice to a corporation or other entity of a proceeding ''shall be made'' by ''delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(2)(i) of this rule.''

Rule 141(a)(2)(i) authorizes delivery by ''handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining confirmation of receipt; or giving confirmed telegraphic notice.''

[3] *See, e.g., Alcohol Sensors Int'l, Ltd.*, Exchange Act Rel. No. 50150 (Aug. 5, 2004), 83 SEC Docket 1748, 1749 n.1 (stating that more than 430 copies of the OIP were served in order to accomplish service on seventeen respondents in a Section 12(j) proceeding).

[4] There are certain circumstances in which notice of an action taken by delegated authority will not be posted on the Commission's Web site or published in the **Federal Register**. For example, the Commission does not publish a delegated decision to grant or deny confidential treatment where the requestor has asked for confidential treatment for the request itself.

[5] *See* 44 U.S.C. 1508 (stating that time between publication of notice in **Federal Register** and date fixed in notice for hearing or termination of opportunity to be heard should generally be not less than fifteen days unless otherwise specifically prescribed by Act of Congress).

Act (''EAJA'') proceedings before an administrative law judge, authorizes the law judge considering an application for an award of fees and expenses under the EAJA, 5 U.S.C. 504, to order all proceedings that are otherwise available under Rule 8(d) of the Rules of Practice. Former Rule 8(d) authorized the conduct of prehearing conferences and briefings. When the Commission comprehensively revised and renumbered its Rules of Practice in 1995, former Rule 8(d) was incorporated into Rules 221 and 222(a).[6] However, the reference to Rule 8(d) contained in EAJA Rule 55 was not changed at that time. The amendment replaces the reference to Rule 8(d) with a reference to Rules 221 and 222(a).

D. Current Rule 102(e)(3)(iii) provides that Commission review of a hearing officer's initial decision on a petition to lift a temporary suspension of a person from appearing and practicing before the Commission will be governed by the time limits set forth in § 201.531. The amendment corrects the reference to § 201.540, which governs the appeal and Commission review of certain initial decisions.

E. Currently, Rule 111(h) provides no time limit within which a law judge is required to rule upon a motion to correct a manifest error of fact in an initial decision. The amendment provides that such a ruling must be made within 20 days of the filing of any brief in opposition. The amendment further states that any brief in opposition must be filed within five days after service of the motion.

The Commission has received motions purportedly filed pursuant to Rule 111(h) that challenge the merits of an initial decision. However, Rule 111(h) has a much more limited purpose. Rule 111(h) is therefore amended to make clear that motions to correct manifest error are properly filed under this Rule only if they contest a patent misstatement of fact in the initial decision. Motions purporting to contest the substantive merits of the initial decision will be treated as a petition for review under Rule 410.

F. Current Rule 152(d) provides that an original and three copies of all papers shall be filed. The Commission is adopting the rule substantially as proposed. The amendment makes clear that if filing is made by facsimile pursuant to Rule 151, the filer must transmit only one non-facsimile original with a manual signature and does not need to transmit additional non-facsimile copies. The rule as adopted provides that the non-facsimile original must be accompanied by a statement of the date on which, and the facsimile number to which, the party made transmission of the facsimile filing.

G. Currently, Rule 154(c) and Rule 250(c) provide page limitations for, respectively, motions in general and motions for summary disposition. Rule 450(c), however, now sets word-count limitations, instead of page limitations, for briefs filed with the Commission. The amendment to Rule 154(c) substitutes a limitation for motions of 7,000 words, exclusive of any table of contents, table of authority, or addendum of applicable cases, legislative provisions, or exhibits. Rule 470(b), which currently requires motions for reconsideration to comply with the page length limitation in Rule 154(c), is amended to refer to the word limitation in amended Rule 154(c).

The amendment to Rule 250(c) sets a limitation of 9,800 words for a motion for summary disposition and any supporting memorandum of points and authorities. The limitation excludes declarations, affidavits, or attachments. Motions for summary dispositions are often made in cases where a respondent has been criminally convicted or an injunction has been entered and the conviction or injunction provides the basis for an administrative order against the respondent. In such cases, documents establishing the conviction or injunction must be included as exhibits to the motion; these documents alone can total more than the entire word limitation allotted to the motion. The amendment excludes such attachments from the word-count restriction.

H. Current Rule 201(b) provides that, by order of the Commission, any proceeding may be severed with respect to some or all parties. The amendment allows severance with respect to ''one or more'' parties, making clear that severance is available as to a single party, under appropriate circumstances.

I. Current Rule 210(a)(2) contains a reference to § 201.612. Section 612 was renumbered as § 201.1103, effective April 19, 2004. The amendment changes the reference accordingly.[7]

J. Current Rule 411(c) refers to ''any brief in opposition to a petition for review permitted pursuant to § 201.410(d).'' The Rules of Practice no longer provide for briefs in opposition to a petition for review, and Section 410(d) was removed and reserved effective April 19, 2004. The amendment deletes the reference.

K. Currently, Rule 601(a) provides that funds due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to Rule 360. Under Rule 360(d)(2) as revised, effective April 19, 2004, an initial decision no longer becomes final automatically. That rule now provides that the Commission will issue an order stating that a decision has become final. Rule 360(d)(2) further provides for the order of finality to state the date on which sanctions, if any, take effect. Amended Rule 601(a) clarifies that funds due pursuant to an order by a hearing officer are to be paid in accordance with the order of finality.

L. Current Rule 900(b) requires the Chief Administrative Law Judge to apprise the Commission specifically if a proceeding assigned to an administrative law judge has not been concluded ''within 30 days of the guidelines established in paragraph (a) of this section.'' Paragraph (a) no longer contains guidelines relevant to the timely conclusion of proceedings before law judges; these guidelines are now found in § 201.360(a)(2). Rule 360(a)(3) requires the Chief Administrative Law Judge to submit a motion for an extension to the Commission if it is determined that an initial decision cannot be issued within the period specified in the guidelines. The submission of such motions renders the specific apprisal by the Chief Administrative Law Judge under Rule 900(b) unnecessary. The amendment eliminates that requirement.

M. In proceedings where an order issued by the Commission requires a respondent to pay disgorgement and assesses a civil penalty against that respondent, current Rule 1100 allows the Commission to create a Fair Fund for the benefit of investors who were harmed by the violation found. The amendment makes clear that in such cases, hearing officers also have the authority to create Fair Funds.

N. Tables I, II, and III of Subpart D of the Commission Rules of Practice have been superseded by subsequent amendments to the federal securities laws and these rules, and are of little utility to the public. The amendment deletes these tables.

O. Although not previously proposed for comment, Rule 104, which sets the business hours of the Commission, is amended to reflect the new address of the Commission Headquarters office, which relocated to 100 F Street, NE., Washington, DC 20549 after the above amendments were proposed.

[6] *See* Exchange Act Rel. No. 35833 (June 23, 1995), 59 SEC Docket 1546, 1631 tbl. III.

[7] Language was inadvertently deleted from Rule 210(b) in an earlier revision of the Rules of Practice. This language is now being reinstated.

P. The Commission is also correcting existing delegations and making new delegations of authority to the staff. Title 17 CFR 200.30–7 (Delegation of authority to the Secretary of the Commission) currently delegates to the Commission's Secretary the authority, among other things, to extend the time within which to make filings and to enlarge the length limitation on those filings. The Commission is amending § 200.30–7(a)(4), which currently authorizes the Secretary to grant or deny extensions of time to make filings in administrative proceedings, to clarify that the Secretary is authorized to grant extensions to parties making filings related to the establishment and administration of Fair Funds and disgorgement plans under part 201, subpart F of the Commission's Rules of Practice, § 201.1100 *et seq.*

The Commission also is amending § 200.30–7(a)(5) and § 200.30–10(a)(5), which currently permit the Secretary or the Chief Administrative Law Judge, respectively, to authorize the filing of briefs exceeding 50 pages ''in accordance with Rule 450(c).'' Because Rule 450(c) now sets word-count limitations, instead of page limitations, for briefs filed with the Commission, the delegations are corrected to provide that the Secretary or the Chief Administrative Law Judge may authorize a party to file briefs exceeding 14,000 words. The Commission also amends § 200.30–7(a)(5) to delegate to the Secretary the authority to permit the filing of motions exceeding 7,000 words in length, pursuant to amended Rule 154(c) of the Commission's Rules of Practice.

The Commission amends § 200.30–14(g)(1)(xii), which delegates to the General Counsel the authority to determine requests for leave to file an opposition to a petition for review. This delegation is no longer necessary, as the Rules of Practice no longer provide for briefs in opposition to a petition for review. The Commission has enacted a new delegation to permit the General Counsel to set the effective date of sanctions imposed on a party that previously were stayed pending appeal to the federal courts, once the mandate affirming the imposition of sanctions has been issued by the court.

II. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with Section 533(b)(3)(A) of the Administrative Procedure Act,[8] that this revision relates solely to agency organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication.[9] The Regulatory Flexibility Act[10] therefore does not apply. Because these rules relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' they are not subject to the Small Business Regulatory Enforcement Fairness Act.[11]

These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[12]

III. Costs and Benefits of the Proposed Amendments

Taken as a whole, the Commission's Rules of Practice create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits to the parties are the familiar benefits of due process: Notice, opportunity to be heard, efficiency, and fairness. The costs of these processes fall largely on the Commission.

The amendments set forth in this release variously clarify existing practice, relate to internal agency management, increase the efficiency of proceedings, or promote due process. The Commission requested data to quantify the costs and the value of the benefits identified. We received no comments in response to this request.

IV. Effect on Efficiency, Competition, and Capital Formation

Section 2(b) of the Securities Act of 1933,[13] Section 3(f) of the Exchange Act,[14] Section 2(c) of the Investment Company Act of 1940,[15] and Section 202(c) of the Investment Advisers Act of 1940 [16] require us, when engaging in rulemaking that requires us to consider or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [17] prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. These rules and amendments are intended to enhance the transparency and facilitate parties' understanding of the Rules. The amendments are also intended to clarify existing practice and increase the efficiency of Commission enforcement and self-regulatory organization disciplinary review proceedings. The rules and amendments apply to all persons involved in administrative proceedings before the Commission, and therefore the Commission does not expect the rules and amendments to have an anti-competitive effect. To the extent the rules and amendments would foster making whole victims of securities laws violations and would increase the transparency and efficiency of the Commission's administrative proceedings, there might be an increase in investor confidence in market fairness and efficiency. However, the magnitude of the effect of the amendments in this regard is difficult to quantify. We requested comment on the possible effects of our rule proposals on efficiency, competition, and capital formation. We received no comments in response to this request.

V. Statutory Basis and Text of Proposed Amendments

These amendments to the Rules of Practice and related provisions are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 4A, 19, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78s, and 78w; section 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies).

17 CFR Part 201

Administrative practice and procedure.

Text of the Adopted Rules

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[8] 5 U.S.C. 553(b)(3)(A).

[9] Nonetheless, the Commission had previously determined that it would be useful to publish most of these proposed rules for notice and comment before adoption. *See* 5 U.S.C. 603. The Commission received no comments in response to its request.

[10] 5 U.S.C. 601 *et seq.*

[11] 5 U.S.C. 804(3)(C).

[12] 44 U.S.C. 3501 *et seq.*

[13] 15 U.S.C. 77b(b).

[14] 15 U.S.C. 78c(f).

[15] 15 U.S.C. 80a–2(c).

[16] 15 U.S.C. 80b–2(c).

[17] 15 U.S.C. 78w(a)(2).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30–7 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) * * *

(4) To grant or deny extensions of time within which to file papers with the Commission under Rule 161 of the Commission's Rules of Practice, § 201.161 of this chapter, or under part 201, subpart F of the Commission's Rules pertaining to Fair Fund and Disgorgement Plans, §§ 201.1100–201.1106;

(5) To permit the filing of briefs with the Commission exceeding 14,000 words in length, pursuant to Rule 450(c) of the Commission's Rule of Practice, § 201.450(c) of this chapter, and to permit the filing of motions with the Commission in excess of 7,000 words pursuant to Rule 154(c) of the Commission's Rules of Practice, § 201.154(c) of this chapter;

* * * * *

§ 200.30–10 [Amended]

■ 3. In § 200.30–10, paragraph (a)(5), remove the words ''50 pages'' and, in their place, add the words ''14,000 words''.

■ 4. Section 200.30–14 is amended by revising paragraph (g)(1)(xii) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(g)(1) * * *

(xii) To issue an order setting the effective date of sanctions that were stayed pending appeal to the federal courts, upon issuance of the mandate affirming the Commission's order imposing those sanctions.

* * * * *

PART 201—RULES OF PRACTICE

■ 5. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 77s, 78w, 78x, 79t, 77sss, 80a–37 and 80b–11; 5 U.S.C. 504(c)(1).

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

§ 201.55 [Amended]

■ 6. In § 201.55(a), in the third sentence, remove the words ''Rule 8(d) of the Commission's Rules of Practice'' and, in their place, add the words ''§ 201.221 and § 201.222(a)''.

■ 7. The authority citation for Part 201, subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

§ 201.102 [Amended]

■ 8. In § 201.102(e)(3)(iii), in the last sentence, remove the cite ''§ 201.531'' and, in its place, add the cite ''§ 201.540''.

§ 201.104 [Amended]

■ 9. In § 201.104, remove the words ''450 Fifth Street, NW., Washington, DC 20549'' and, in their place, add the words ''100 F Street, NE., Washington, DC 20549''.

■ 10. Section 201.111 is amended by revising paragraph (h) to read as follows:

§ 201.111 Hearing officer: Authority.

* * * * *

(h) Subject to any limitations set forth elsewhere in these Rules of Practice, considering and ruling upon all procedural and other motions, including a motion to correct a manifest error of fact in the initial decision. A motion to correct is properly filed under this Rule only if the basis for the motion is a patent misstatement of fact in the initial decision. Any motion to correct must be filed within ten days of the initial decision. A brief in opposition may be filed within five days of a motion to correct. The hearing officer shall have 20 days from the date of filing of any brief in opposition filed to rule on a motion to correct;

* * * * *

■ 11. Section 201.141 is amended by:

■ a. Revising paragraph (a)(2)(ii); and

■ b. Adding paragraph (a)(2)(vi).

The revision and addition read as follows.

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

(a) * * *

(2) * * *

(ii) *To corporations or entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such notice, by any method specified in paragraph (a)(2)(i) of this section, or, in the case of an issuer of a class of securities registered with the Commission, by sending a copy of the order addressed to the most recent address shown on the entity's most recent filing with the Commission by U.S. Postal Service certified, registered, or Express Mail and obtaining a confirmation of attempted delivery.

* * * * *

(vi) *To persons registered with self-regulatory organizations.* Notice of a proceeding shall be made to a person registered with a self-regulatory organization by any method specified in paragraph (a)(2)(i) of this section, or by sending a copy of the order addressed to the most recent address for the person shown in the Central Registration Depository by U.S. Postal Service certified, registered, or Express Mail and obtaining a confirmation of attempted delivery.

* * * * *

■ 12. Section 201.152 is amended by revising paragraph (d) to read as follows:

§ 201.152 Filing of papers: Form.

* * * * *

(d) *Number of copies.* An original and three copies of all papers shall be filed, unless filing is made by facsimile in accordance with § 201.151. If filing is made by facsimile, the filer shall also transmit to the Office of the Secretary one non-facsimile original with a manual signature, contemporaneously with the facsimile transmission. The non-facsimile original must be accompanied by a statement of the date on which, and the facsimile number to which, the party made transmission of the facsimile filing.

* * * * *

■ 13. Section 201.154 is amended by revising paragraph (c) to read as follows:

§ 201.154 Motions.

* * * * *

(c) *Length limitation.* No motion (together with the brief in support of the motion), brief in opposition to the motion, or reply brief shall exceed 7,000 words, exclusive of any table of contents or table of authorities. The word limit shall not apply to any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, or relevant exhibits. Requests for leave to file motions and briefs in excess of 7,000 words are disfavored. A motion

or brief, together with any accompanying brief, that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any motion or brief that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the document complies with the length limitation set forth in this paragraph and stating the number of words in the document. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

■ 14. Section 201.201 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 201.201 Consolidation and severance of proceedings.

* * * * *

(b) * * * By order of the Commission, any proceeding may be severed with respect to one or more parties. * * *

■ 15. Section 201.210 is amended by:

■ a. In paragraph (a)(2), removing the cite ''§ 201.612'' and, in its place, adding the cite ''§ 201.1103'';

■ b. At the end of the introductory text of paragraph (b)(1), removing the colon and in its place adding a period; and

■ c. Adding a sentence at the end of the introductory text of paragraph (b)(1).

The addition reads as follows:

§ 201.210 Parties, limited participants and amici curiae.

* * * * *

(b) * * * (1) * * * No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this section would be inadequate for the protection of the person's interests.

* * * * *

■ 16. Section 201.250 is amended by revising paragraph (c) to read as follows:

§ 201.250 Motion for summary disposition.

* * * * *

(c) The motion for summary disposition, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, or attachments), shall not exceed 9,800 words. Requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored. A motion that does not, together with any accompanying memorandum of points and authorities, exceed 35 pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, or attachments) is presumptively considered to contain no more than 9,800 words. Any motion that exceeds these page limits must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the length limitation set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

■ 17. Section 201.411 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 201.411 Commission consideration of initial decisions by hearing officers.

* * * * *

(c) * * * The Commission may, on its own initiative, order review of any initial decision, or any portion of any initial decision, within 21 days after the end of the period established for filing a petition for review pursuant to § 210.410(b). * * *

* * * * *

■ 18. Section 201.430 is amended by revising paragraph (b)(1) to read as follows:

§ 201.430 Appeal of actions made pursuant to delegated authority.

* * * * *

(b) * * * (1) *Notice of intention to petition for review.* A party to an action made pursuant to delegated authority, or a person aggrieved by such action, may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice of the action to that party or aggrieved person, or 15 days after publication of the notice of action in the **Federal Register**, or five days after service of notice of the action on that party or aggrieved person pursuant to § 201.141(b), whichever is the earliest.

* * * * *

■ 19. Section 201.470 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 201.470 Reconsideration.

* * * * *

(b) * * * A motion for reconsideration shall conform to the requirements, including the limitation on the numbers of words, provided in § 201.154. * * *

■ 20. Section 201.601 is amended by revising paragraph (a) to read as follows:

§ 201.601 Prompt payment of disgorgement, interest and penalties.

(a) *Timing of payments.* Unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest, or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid in accordance with the order of finality issued pursuant to § 201.360(d)(2).

* * * * *

■ 21. Section 201.900 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

* * * * *

(b) * * * In connection with these periodic reports, if a proceeding pending before the Commission has not been concluded within 30 days of the guidelines established in paragraph (a) of this section, the General Counsel shall specifically apprise the Commission of that fact, and shall describe the procedural posture of the case, project an estimated date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

* * * * *

Subpart D [Amended]

■ 22. Part 201, subpart D, is amended by removing Tables I, II, and III at the end of the subpart.

Subpart F—Fair Fund and Disgorgement Plans

■ 23. The authority citation for subpart F continues to read as follows.

Authority: 15 U.S.C. 77h–1, 77s, 77u, 78c(b), 78d–1, 78d–2, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–39, 80a–40, 80b–3, 80b–11, 80b–12, and 7246.

■ 24. Section 201.1100 is revised to read as follows:

§ 201.1100 Creation of Fair Fund.

In any agency process initiated by an order instituting proceedings in which the Commission or the hearing officer issues an order requiring the payment of disgorgement by a respondent and also assessing a civil money penalty against that respondent, the Commission or the hearing officer may order that the amount of disgorgement and of the civil penalty, together with any funds received pursuant to 15 U.S.C. 7246(b),

be used to create a fund for the benefit of investors who were harmed by the violation.

Dated: November 29, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23613 Filed 12–2–05; 8:45 am]

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Federal Register

Monday,
December 5, 2005

Part V

The President

Proclamation 7967—World AIDS Day, 2005

Federal Register
Vol. 70, No. 232
Monday, December 5, 2005

Presidential Documents

Title 3—

The President

Proclamation 7967 of December 1, 2005

World AIDS Day, 2005

By the President of the United States of America

A Proclamation

On World AIDS Day, we remember those who have lost their lives to AIDS, and we recommit ourselves to fighting and preventing HIV/AIDS and to comforting those infected and their loved ones.

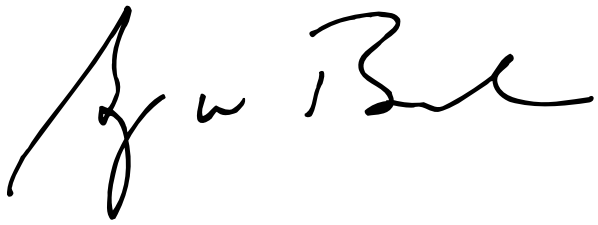
The United States is working with its partners around the world to turn the tide against HIV/AIDS. In May 2003, we committed $15 billion over 5 years to support treatment, prevention, and care. This plan is designed to support and strengthen the AIDS-fighting strategies of many nations, including 15 affected countries in Africa, Asia, and the Caribbean. Approximately 400,000 men, women, and children in sub-Saharan Africa have received life-saving treatment supported through this program. This is a remarkable improvement from 2 years ago, when just 50,000 people in sub-Saharan Africa were receiving treatment for HIV/AIDS. The plan focuses on the ABC prevention message—Abstain, Be faithful, and use Condoms—with abstinence being the only sure way to prevent the sexual transmission of HIV/AIDS. We are also working with faith-based and community organizations and local leaders around the world to expand testing facilities, upgrade clinics and hospitals, and train and support medical personnel.

Here at home, more than 1 million people suffer from HIV/AIDS. To stop the spread of this virus, we are focusing extraordinary Federal efforts and resources to increase routine voluntary testing, improve access to life-extending care, and develop a vaccine. We are also grateful for the work of faith-based and community programs whose efforts in these areas are helping to improve the lives of our citizens.

On World AIDS Day, we recognize the effect of HIV/AIDS and renew our commitment to defeat this pandemic. Americans believe that every life matters and every person counts. The United States will continue to spread a vision of hope as we stand with people from around the world to face the challenges of HIV/AIDS with courage and determination. Together, we can build a better future for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 2005, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in appropriate activities to remember those who have lost their lives to this deadly disease and to comfort and support those living with HIV/AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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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.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2528/P.L. 109–114
Military Quality of Life and Veterans Affairs Appropriations Act, 2006 (Nov. 30, 2005; 119 Stat. 2372)

H.R. 3058/P.L. 109–115
Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Nov. 30, 2005; 119 Stat. 2396)
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1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
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*90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.