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WHEN: Tuesday, April 4, 2006
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN: 3206–AK95

Federal Employees Health Benefits Program: Discontinuance of Health Plan in an Emergency

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits (FEHB) regulations regarding discontinuance of a health plan to include situations in which a health plan becomes incapacitated, either temporarily or permanently, as the result of a disaster.

DATES: OPM must receive comments on or before May 8, 2006.

ADDRESSES: Send written comments to Anne Easton, Manager Insurance Group, Center for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or deliver to OPM Room 3425, 1900 E Street, NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach; first dial (1–888) 801–7210; at the prompt, enter (202) 606–1461.

SUPPLEMENTARY INFORMATION: OPM currently has regulations dealing with the discontinuance of a health plan in whole or part. The regulations apply when a plan goes out of business or withdraws from the FEHB Program. Enrollees in such plans are notified that they need to change plans. The regulations also allow the automatic transfer of the enrollment of annuitants who do not change plans.

In light of the devastation wrought by Hurricane Katrina, OPM is expanding the definition of a health plan to include situations in which a plan becomes incapable of providing services, either on a permanent or temporary basis, because of a disaster. In such a situation enrollees will be allowed to change health plans. However, depending on the nature of the disaster, it may not be possible to locate enrollees to notify them of the need to change health plans. To ensure there is no loss of coverage, any enrollee who is not able to make a change in these circumstances will be transferred automatically to the standard option of the nationwide Blue Cross and Blue Shield Service Benefit Plan.

Invoking the provisions of these regulations will be at OPM's discretion. OPM will provide whatever notification is feasible, if a disaster necessitates enrollment changes under these provisions.

It should be noted that, although one of the regulatory sections being amended, § 890.301, refers to employees who do not participate in premium conversion, under the premium conversion regulations at § 892.207 these provisions would also apply to employees who do participate in premium conversion.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

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

Lists of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599 C of Pub. L 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.301 add new paragraph (i)(4)(iv) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(i) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an employee must change the enrollment within 60 days of the disaster, as announced by OPM. If an employee does not change the enrollment within the time frame announced by OPM, the employee will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

■ 3. In § 890.306 add new paragraph (1)(4)(v) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

(1) * * *

(4) * * *

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will

be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

■ 4. In § 890.806 add new paragraph (j)(4)(iv) to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

(j) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If the former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

■ 5. In § 890.1108 add new paragraph (h)(4)(iv) to read as follows:

§ 890.1108 Opportunities to change enrollment; effective dates.

* * * * *

(h) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

[FR Doc. 06–2081 Filed 3–6–06; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–078–2]

Karnal Bunt; Addition and Removal of Regulated Areas in Arizona

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas and by removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas. Those actions were necessary to prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions on certain areas that were no longer necessary.

DATES: Effective on March 7, 2006, we are adopting as a final rule the interim rule that became effective on December 7, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Karnal Bunt Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–3769.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 7, 2005, and published in the **Federal Register** on December 13, 2005 (70 FR 73553–73556, Docket No. 05–078–1), we amended the regulations in ''Subpart—Karnal Bunt'' (7 CFR 301.89–1 through 301.89–16) by adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas in § 301.89–3(g), either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. In the same interim rule, we also amended the regulations by removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas based on our determination that those fields or areas had met our criteria for release from regulation.

We solicited comments concerning the interim rule for 60 days ending February 13, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 73553–73556 on December 13, 2005.

Done in Washington, DC, this 28th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2073 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 05–003–3]

Importation of Peppers From Certain Central American Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables in order to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported, under certain conditions, into the United States without treatment. The conditions to which the importation of peppers will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of peppers from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: *Effective Date:* March 7, 2006.

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

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 though 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

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

On November 7, 2005, we published a document in the **Federal Register** (70 FR 67375, Docket No. 05–003–2) in which we corrected the Supplementary Information section of the proposed rule to state that Guatemala was the only Central American country covered by our proposal that currently contains areas free of the Mediterranean fruit fly (Medfly). In addition, we corrected the figure given in the proposed rule's ''Paperwork Reduction Act'' section for the estimated annual total burden on respondents.

We solicited comments on the proposed rule for 60 days ending on December 12, 2005. We received 32 comments by that date. They were from representatives of State and foreign governments, importers and exporters, industry organizations, producers, scientists, and private citizens. Of those commenters, 31 fully supported the proposed changes, although one of those commenters posed a question, which is addressed below. The remaining commenter was opposed to the proposed rule. The issues raised by that commenter are also addressed below.

One commenter asked if the recognition and approval of fruit fly free areas in the Central American countries covered by the rule will be performed by Animal and Plant Health Inspection Service (APHIS) personnel coming from the United States or by APHIS personnel already on duty in the region.

The recognition and approval of free areas will be conducted in accordance with the procedures described in paragraph (f) of § 319.56–2 of the regulations. The APHIS personnel involved in the approval and auditing activities called for by that paragraph may be already stationed in the region or may be drawn from APHIS offices in the United States.

The commenter who opposed the proposed rule stated that from 1999 to 2005, there were 794 interceptions in Florida of the pests of concern identified in the pest risk assessment and the proposed rule. The commenter stated that allowing the importation of hosts of these pests would add to the likelihood of pest introduction.

We are not making any changes to our proposal in response to this comment. We suspect the commenter's figure includes pest interceptions on other fruits and vegetables, not only peppers, and that the majority of these interceptions were in passenger baggage, not commercial cargo. An examination of our interception records from the port of Miami, FL, from 1999 to 2005 revealed that there were only two interceptions of any of the quarantine pests identified in the proposed rule; these interceptions were made in commercial shipments of processed peppers. It is unlikely that those processed peppers were subjected to any of the phytosanitary measures described in the proposed rule and required by this final rule. For the reasons detailed in the proposed rule, we are confident that the risks associated with commercial shipments of peppers imported into the United States from Central America will be effectively mitigated through the application of the phytosanitary measures required by this final rule.

The same commenter agreed that the proposed phytosanitary measures were conceptually well-grounded, but expressed doubt as to whether the national plant protection organizations (NPPOs) of the individual countries would be able to provide sufficient oversight of those measures to prevent the movement of pests into Florida.

The commenter provided no evidence to support his contention regarding the inability of the Central American NPPOs to oversee the prescribed phytosanitary measures. The continued ability of producers in those countries to export peppers to markets such as the United States is dependent on their ability to meet our phytosanitary standards. We are confident that the NPPOs in Central America are fully capable of overseeing the application of the measures required by this rule. Further, this rule provides that APHIS will maintain oversight by participating in the approval and monitoring of production sites and by reviewing the trapping records that must be maintained for each site. If, through trapping records, site visits, or port of entry inspections, we find that any of the required mitigation measures are not being properly administered, we will suspend shipments from the offending sites.

Miscellaneous Change

In our proposed provisions concerning the placement of Medfly traps in the buffer area surrounding each production site, we referred to Medfly traps with an approved protein bait. In this final rule, those provisions (§ 319.56–2oo(b)(3)(iii)) refer Medfly traps with an approved lure, as it will be parapheromone lures, rather than protein baits, that will be used outside of the greenhouses.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in the previous paragraph.

Note: In our October 2005 proposed rule, we proposed to add the conditions governing the importation of peppers from Central America as § 319.56–2nn. In this final rule, those conditions are added as § 319.56–200.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the importation of peppers from certain countries while continuing to protect against the introduction of plant pests into the United States. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for peppers from eligible Central American countries is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations governing the importation of fruits and vegetables in order to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported, under certain conditions, into the United States without treatment. The conditions to which the importation of peppers will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of peppers from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. In accordance with section 604 of the RFA, we have prepared a final regulatory flexibility analysis describing the expected impact of the changes in this rule on small entities. During the comment period for our proposed rule, we did not receive any comments pertaining to the initial regulatory flexibility analysis presented in that document.

Central American Production and Exports

While agriculture is an important industry in the countries that will be affected by this rule, it does not account for the largest share of gross domestic product in any of the countries. Peppers do not appear to be a major crop in those Central American countries. However, production and exports of peppers are following upward trends.

Over the past four decades, pepper production in Central America has been on the rise. For the last 11 years, exports of peppers from this region have also increased. However, much of the increase in exports is a reflection of increased trade among the countries in this region. During this time period, an average of 62.23 percent of exports were intra-regional. Although this percentage has fluctuated substantially, the percentage of peppers exported from Central American countries to other Central American countries has been generally above 70 percent since 1997 with the exception of 2002. In 2003, approximately 96 percent of all Central American pepper exports were sent to other countries within the region.

It is estimated that about 31,040 metric tons of peppers may be imported into the United States each year from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua as a result of this rule.[1]

U.S. Production and Trade Levels

In 2004, U.S. pepper production totaled 843,696 metric tons (table 1). While domestic production has fluctuated from year to year and has declined or remained steady since 2000, there has been an upward trend in domestic pepper production over the last 9 years. Imports have also been on the rise, and these have been increasing at a rapid pace since 1996. Per capita consumption of bell peppers has remained fairly constant over the past 9 years, while consumption of chili peppers has been growing at a steady pace since 1996, as seen in table 1. Although the levels of production, imports, and per capita consumption are reported for all pepper varieties, information on exports and domestic consumption is not available for all varieties. This is only reported in the case of bell peppers, and is shown in table 2. That table shows that most production is consumed domestically, with approximately 10 percent devoted to exports. Additionally, as mentioned above, per capita consumption of bell peppers has been steady despite the overall increase in imports.

TABLE 1.—U.S. PRODUCTION, IMPORTS, AND PER CAPITA CONSUMPTION OF ALL PEPPERS, 1996–2004

Year	Production and imports (metric tons)		Per capita consumption (pounds)		
	Production	Imports	Bell peppers	Chili peppers	Total
1996	752,976	277,334	7.1	4.6	11.7
1997	680,400	290,557	6.4	4.5	10.9
1998	662,256	329,336	6.4	4.7	11.1
1999	707,616	342,128	6.7	4.7	11.4
2000	911,736	346,660	7.0	5.1	12.1
2001	857,304	366,514	6.9	5.1	12.0
2002	843,696	408,499	6.8	5.7	12.5
2003	843,696	426,197	6.9	5.5	12.4
2004	843,696	445,982	7.1	6.0	13.1

Source: USDA/ERS, ''Vegetables and Melons Yearbook,'' *http://usda.mannlib.cornell.edu/data-sets/specialty/89011/.*

TABLE 2.—U.S. SUPPLY AND UTILIZATION OF FRESH BELL PEPPERS, 1996–2004

Year	Supply			Utilization		
	Production*	Imports*	Total*	Exports*	Domestic*	Per capita use (pounds)
1996	754,745	171,143	925,888	60,465	865,423	7.1
1997	678,540	179,217	857,758	60,692	797,066	6.4
1998	660,260	199,085	859,345	57,970	801,375	6.4
1999	705,892	206,524	912,416	66,309	846,107	6.7
2000	765,631	198,190	963,822	71,479	892,342	7.0
2001	748,168	215,596	963,764	73,347	890,417	6.9
2002	710,700	249,979	960,679	73,166	887,514	6.8

[1] These estimates were provided by the exporting countries and have been aggregated for the purpose of this analysis.

TABLE 2.—U.S. SUPPLY AND UTILIZATION OF FRESH BELL PEPPERS, 1996–2004—Continued

Year	Supply			Utilization		
	Production*	Imports*	Total*	Exports*	Domestic*	Per capita use (pounds)
2003	731,112	245,715	976,828	72,077	904,751	6.9
2004	762,184	258,053	1,020,237	73,438	946,799	7.1

Source: USDA/ERS, ''Vegetables and Melons Yearbook,'' *http://usda.mannlib.cornell.edu/data-sets/specialty/89011/.*
* Amounts shown are in metric tons.

From 1995 to 2003, most of the peppers imported into the United States came from Mexico, Canada, and the Netherlands, with the majority supplied by Mexico. Given the close ties created by the North American Free Trade Agreement, these trading patterns are not surprising.

It is unlikely that this rule will lead to dramatic increases in U.S. import levels of peppers. The amount of peppers expected to be imported from the countries covered by this rule (31,040 metric tons) represents approximately 6.95 percent of the 2004 import level (445,982 metric tons). Thus, Central American imports are not expected to command a large portion of the U.S. imported pepper market.

Effects on Small Entities

This rule will affect domestic producers of peppers as well as importers that deal with these commodities. It is likely that the entities affected will be small according to Small Business Administration (SBA) guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities will not be significant.

Two alternatives to this rule are as follows: (1) Maintaining the regulations as they are currently written regarding the importation of peppers from these Central American countries or (2) allowing importation of the peppers under phytosanitary requirements less stringent than those described in this rule.

The first alternative would maintain current safeguards against the entry of quarantine pests, *i.e.*, continue the current prohibition on the importation of fresh peppers from the countries covered by this rule. However, given our determination that the application of the phytosanitary measures described in this rule will effectively mitigate the risks associated with the importation of commercial shipments of peppers from the specified Central American countries, we do not believe a continued prohibition on those imports would be appropriate or justifiable. Further, this option would also mean that those specified Central American countries, as well as the United States, would forgo the economic benefits expected to be afforded by the trade of Central American peppers.

The second alternative—allowing importation of fresh peppers from certain Central American countries under phytosanitary requirements less restrictive than those in this rule—could potentially lead to the introduction of pests not currently found in the United States. This option could result in significant damage and costs to domestic production and is not desirable for those reasons.

Affected U.S. pepper producers are expected to be small based on 2002 Census of Agriculture data and SBA guidelines for entities in two farm categories: Other Vegetable (except Potato) and Melon Farming (North American Industry Classification System [NAICS] number 111219) and Other Food Crops Grown Under Cover (NAICS number 111419). The SBA classifies producers in these farm categories as small entities if their total annual sales are no more than $750,000. APHIS does not have information on the size distribution of domestic pepper producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States.[2] Of this number, approximately 97 percent had total annual sales of less than $500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms.[3] This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 4,748 pepper farms that could be affected by this rule would also qualify as small. In the case of fruit and vegetable wholesalers (NAICS number 422480),[4] those entities with fewer than 100 employees are considered small by SBA standards.[5] In 1997, there were a total of 4,811 fruit and vegetable wholesale trade firms in the United States.[6] Of these firms, 4,610 or 95.8 percent employed fewer than 100 employees and were considered small by SBA standards. Between 1997 and 2002 there is not likely to have been substantial changes in the industry. Therefore, domestic producers and importers that may be affected by this rule are predominantly small entities.

Economic analysis of the expected increase in imports of peppers from Central America shows that the importation of these commodities will lead to negligible changes in domestic prices. Based on historical consumption data, an increase in imports of this magnitude would lead to a decrease in price of approximately $0.01 to $0.02 per pound at the retail level, based on an average price of $1.15 per pound over the last 25 years.

Although domestic producers may face slightly lower prices as a result of the increase in the pepper supply, these price changes are expected to be negligible. Changes of the magnitude presented here should not have large repercussions for either domestic producers or importers of peppers.

This rule contains information collection or recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This final rule allows peppers to be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. State and local laws and regulations regarding peppers imported under this rule will be preempted while the fruit is in foreign commerce. Fresh peppers are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce

[2] This number represents the total number of farms in the United States, thus including barley, buckwheat, corn, millet, oats, rice, soybean, and sugarcane farms.

[3] Source: SBA and 2002 Census of Agriculture.

[4] Note that this NAICS code relates to the 1997 Economic Census. The 2002 NAICS code for this group is 424480.

[5] For NAICS 424480, SBA guidelines state that an entity with not more than 100 employees should be considered small unless that entity is a government contractor. In this case, the size standard increases to 500 employees. However, in this instance, it is fair to assume that fruit and vegetable importers will not be under government contract since it is against regulations for imports to be used in relevant government programs (*e.g.*, school lunch programs).

[6] Source: SBA and 1997 Economic Census.

until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of peppers under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[7] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0274.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. A new § 319.56–2oo is added to read as follows:

§ 319.56–2oo Administrative instructions: Conditions governing the entry of peppers from certain Central American countries.

Fresh peppers (*Capsicum* spp.) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua only under the following conditions:

(a) For peppers of the species *Capsicum annuum, Capsicum frutescens, Capsicum baccatum,* and *Capsicum chinense* from areas free of Mediterranean fruit fly (Medfly), terms of entry are as follows:

(1) The peppers must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56–2(f) of this subpart.

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus, and if these pests are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

(3) The peppers must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(4) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These peppers were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pests listed in the requirements.''

(b) For peppers of the species *Capsicum annuum, Capsicum frutescens, Capsicum baccatum, Capsicum chinense,* and *Capsicum pubescens* from areas in which Medfly is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO will visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(3) Registered sites must contain traps for the detection of Medfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export peppers to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

[7] Go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0095 then click on ''Submit.'' The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

(iii) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Medfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements.'' The shipping box must be labeled with the identity of the production site.

(c) For peppers of the species *Capsicum pubescens* from areas in which Mexican fruit fly (Mexfly) is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(3) Registered sites must contain traps for the detection of Mexfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Mexfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to ship under the systems approach until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Mexfly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export, and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Mexflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Mexfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, ''These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements.'' The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control number 0579–0274)

Done in Washington, DC, this 1st day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2127 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV06–915–1 C]

Marketing Order Regulating the Handling of Avocados Grown In South Florida; Florida Avocado Maturity Requirements; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agricultural Marketing Service (AMS) is making a correction to the section of the Code of Federal Regulations which specifies maturity requirements for avocados grown in South Florida. The D date for the Meya variety of avocados is listed incorrectly.

DATES: *Effective Date:* March 8, 2006.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375; Fax: (863) 325–8793; 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.

SUPPLEMENTARY INFORMATION:

Background

AMS discovered an error in a maturity date in § 915.332 of the codified regulations. A final rule published in the **Federal Register** on June 16, 1994 (59 FR 30869), inserted specific calendar dates into Table 1 of § 915.332(a)(2), regulating the maturity for avocados grown in South Florida. The D date of the Meya variety was inadvertently published as ''1–89'' when it should have been ''1–09'.

Need for Correction

A maturity date for Meya variety avocados in Marketing Order 915, Avocados Grown in South Florida, is incorrect and needs to be changed. In Table 1 of § 915.332(a)(2), the date should be ''1–09'', but the date appears as ''1–89''. This correction document corrects that mistake.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 915 is corrected by making the following amendment:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 915.332 [Corrected]

■ 2. In § 915.332, Table 1, the entry for Meya (P) is corrected by revising the date appearing in the ''D date'' column to read ''1–09''.

Dated: February 28, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–2118 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Doc. No. FV–05–702 IFR]

Amendments to the Potato Research and Promotion Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The purpose of this rule is to increase the assessment rate on handlers and importers of potatoes from 2 cents to 2.5 cents per hundredweight. The increase is authorized under the Potato Research and Promotion (Plan). The Plan is authorized by the Potato Research and Promotion Act (Act). In order to sustain the three major programs currently conducted by the National Potato Promotion Board (Board), International Marketing, Domestic Marketing (which includes retail marketing), and a nutrition campaign at their present levels beyond June 2006, additional revenue is required.

DATES: This rule is effective March 8, 2006. Comments received by May 8, 2006 will be considered prior to finalization of this rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Washington, DC 20250–0244; fax: (202) 205–2800, e-mail: *Jeanette.Palmer@usda.gov.;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number, the date and the 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/rpb.html.*

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Washington, DC 20250–0244; telephone (202) 720–5976 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This rule is issued under the Potato Research and Promotion (Plan) [7 CFR part 1207], which became effective March 9, 1972. The Plan is authorized by the Potato Research and Promotion Act (Act) [7 U.S.C. 2611–2627].

Executive Order 12988

This rule has been reviewed under the 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 the Act, a person subject to the plan may file a petition with the Secretary of Agriculture (Secretary) stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan is not in accordance with law; and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service

has examined the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

There are approximately 1,353 handlers, 5,223 producers, and 300 importers of potatoes and potato products who are subject to the provisions of the Plan. The Small Business Administration (SBA) defines small agricultural businesses, which includes handlers and importers, as those whose annual receipts are less than $6 million, and small agricultural producers are defined as those having annual receipts of no more than $750,000 annually. Most of the producers and handlers, and some of the importers would be classified as small businesses under the criteria established by the SBA [13 CFR 121.201].

Currently, potato handlers and importers pay a mandatory assessment of 2 cents per hundredweight. Assessments under the program are used to fund promotional campaigns and to conduct research in the areas of U.S. marketing, and international marketing and to enable the Board to exercise its duties in accordance with the Plan. The 2 cent assessment generates about $8.5 million in annual revenues. The current assessment became effective when the Plan was amended in May 1984, to increase the maximum assessment rate from 1 cent per hundredweight to 0.5 percent of the previous 10-year average price received by growers. The Plan is administered by the National Potato Promotion Board (Board) under USDA supervision.

In order to sustain the three major programs currently conducted by the Board, International Marketing, Domestic Marketing (which includes retail marketing), and a nutrition campaign at their present levels beyond June 2006, additional revenue is required. The Board approved this increase in the assessment rate at its March 19, 2005, annual meeting. This increase is consistent with section 1207.342(a) of the Plan, which provides such assessments shall be levied at a rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture. Further, not more than one such assessment may be collected on any potatoes.

The ½ cent assessment rate increase will bring in an estimated $1.5 to $2 million in new revenue, depending upon production levels. For 2005, domestic production was 420,879,000 hundredweight and imports represented 59,683,000 hundredweight. The new rate would allow the Board to maintain its investment in the nutrition campaign and marketing programs. It is estimated that the Board would collect approximately $10 million in assessments with a 2.5 cent per hundredweight assessment rate. Any additional costs should be offset by the benefits to be derived from the research and promotion programs. The Board has determined that the ½ cent increase in assessments would cost potato growers less than one-half of one percent (0.005%) of total production costs or approximately $1.75 per acre based on average yields.

Alternatives were also considered by the Board, which included cutting back funding of marketing programs and the nutrition campaign, and eliminating the nutrition campaign. All of the alternatives were rejected by the Board because it was determined that by the continued funding of the marketing programs and the nutrition campaign would help increase the demand of potatoes. In order to continue to fund these programs, the Board needs to increase the assessment rate by ½ cent per hundredweight.

There are no relevant Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this initial Regulatory Flexibility Analysis regarding the impact of this amendment to the Plan on small entities, and we invite comments concerning potential effects of the proposed amendment.

Background

The Plan became effective on March 9, 1972, after a national referendum among producers. Under the Plan, handlers and importers are assessed 2 cents per hundredweight. No assessment shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes. Importers pay assessments on all tablestock potatoes imported for ultimate human consumption and on all imported seed potatoes. The program currently generates about $8.5 million in annual revenues, which is administered by the Board under USDA supervision. The Board administers a national program of research development, advertising, and promotion designed to strengthen potatoes' competitive position and to maintain and expand domestic and foreign markets for potatoes and potato products.

Currently, the assessment rate is 2 cents per hundredweight levied on all potatoes produced within the 50 States of the United States and on imports of potatoes. In order to sustain the three major programs being conducted by the Board, International Marketing, Domestic Marketing (which includes retail marketing), and a nutrition campaign at their present levels beyond June 2006, additional revenue to the Board is required. The ½ cent assessment rate increase will bring in an estimated $1.5 to $2 million in new revenue, depending upon production levels. For 2005, domestic production was 420,879,000 hundredweight and imports represented 59,683,000 hundredweight. The new rate would allow the Board to maintain its investment in the nutrition campaign and marketing programs. It is estimated that the Board would collect approximately $10 million in assessments with a 2.5 cent per hundredweight assessment rate. Any additional cost should be offset by the benefits to be derived from research and promotion programs.

In addition, the Board, whose members represent all potato producing states as well as importers, voted to increase the assessment rate at its March 19, 2005, annual meeting. Eighty-eight percent of the Board voted to increase the assessment rate. The majority of those that opposed the increase in assessment rate had a number of reasons, including a view that a State program is preferable over a national program and concern about the impact on growers.

This action will amend the rules and regulations issued under the Plan. This action will increase the assessment rate by ½ cent. The rate would increase from 2 cents to 2.5 cents per hundredweight. The 2.5 cents is within the formula allowed by section 1207.342 (a) of the Plan which states the funds to cover the Board's expenses shall be acquired by the levying of assessments upon handler and importers as designated in regulations recommended by the Board and issued by the Secretary. Such assessments shall be levied at a rate fixed by the Secretary which shall not exceed one-half of one per centum of

the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture. Further, not more than one such assessment may be collected on any potatoes. The average price was determined to be $5.88 using the years 1994–2003 and one-half of one per centum is 2.94 cents. Accordingly, the Board's recommendation of 2.5 cents is within the formula allowed by section 1207.342(a).

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to 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) The increase in the assessment rate should correspond as closely as practicable with the new 2006 crop; (2) the Board currently needs additional funding to maintain its marketing programs and nutrition campaign; and (3) a sixty-day period is provided for interested persons to comment.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Potatoes, Promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1207 is amended as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 1. The authority citation for part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627.

■ 2. In § 1207.510, paragraphs (a)(1), (b)(1) and the table immediately following paragraph (b)(3) are revised to read as follows:

§ 1207.510 Levy of assessments.

(a) * * * (1) An assessment rate of 2.5 cents per hundredweight shall be levied on all potatoes produced within the 50 States of the United States.

* * * * *

(b) * * * (1) An assessment rate of 2.5 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes imported into the United States. An assessment rate of 2.5 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed potatoes for ultimate consumption by humans. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the Board through the U.S. Customs Service and Border Protection at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

* * * * *

(3) * * *

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment	
	cents/cwt	cents/kg
0701.10.0020	2.50	0.0551
0701.10.0040	2.50	0.0551
0701.90.1000	2.50	0.0551
0701.90.5010	2.50	0.0551
0701.90.5020	2.50	0.0551
0701.90.5030	2.50	0.0551
0701.90.5040	2.50	0.0551
0710.10.0000	5.00	0.1103
2004.10.4000	5.00	0.1103
2004.10.8020	5.00	0.1103
2004.10.8040	5.00	0.1103
0712.90.3000	3.93	0.0866
2005.20.0070	17.86	0.3936
1105.10.0000	17.86	0.3936
1105.20.0000	17.86	0.3936
2005.20.0040	17.86	0.3936
2005.20.0020	10.20	0.2250
1108.13.0010	22.50	0.4961

Dated: February 28, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–2117 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1251]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; Technical amendments.

SUMMARY: The Board is publishing technical amendments to Regulation B (Equal Credit Opportunity Act) to update the addresses of certain federal enforcement agencies.

DATES: *Effective Date:* March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Minh-Duc T. Le, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* The ECOA is implemented by the Board's Regulation B.

In addition to the general prohibition against discrimination, Regulation B contains specific rules concerning the taking and evaluation of credit applications, including procedures and notices for credit denials and other adverse action. Under section 202.9 of Regulation B, notification given to an applicant when adverse action is taken must contain the name and address of the federal agency that administers compliance with respect to the creditor. The federal agencies' names and addresses are listed in Appendix A of Regulation B. This technical amendment updates the addresses of the Office of the Comptroller of the Currency and the United States Small Business Administration.

12 CFR Chapter II

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Sex discrimination.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 202 to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

■ 2. Appendix A is amended by revising the following Federal Enforcement Agencies addresses to read as follows:

APPENDIX A TO PART 202—FEDERAL ENFORCEMENT AGENCIES

* * * * *

National Banks, and Federal Branches and Federal Agencies of Foreign Banks: Office of the Comptroller of the Currency, Customer Assistance

Group, 1301 McKinney Avenue, Suite 3450, Houston, TX 77010.

* * * * *

Small Business Investment Companies: Associate Deputy Administrator for Capital Access, United States Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 1, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–2123 Filed 3–6–06; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Regulation AA; Docket No. R–1252]

Unfair or Deceptive Acts or Practices

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; Technical amendments.

SUMMARY: The Board is publishing technical amendments to Regulation AA (Unfair or Deceptive Acts or Practices) to update the addresses of the Federal Reserve Banks where consumer complaints regarding a state member bank may be sent.

DATES: *Effective Date:* March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Minh-Duc T. Le, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission Act requires the Board to establish a separate division of consumer affairs to receive and take appropriate action upon complaints about unfair or deceptive acts or practices for banks under its jurisdiction. *See* 15 U.S.C. 57a(f). The procedures for submitting consumer complaints are contained in the Board's Regulation AA (12 CFR part 227). The regulation directs consumers having complaints regarding a state member bank to submit the complaint to the Board or the Federal Reserve Bank of the district in which the bank is located. 12 CFR 227.2(a). The Board is amending Regulation AA to update the addresses of the Reserve Banks where such complaints should be sent.

12 CFR Chapter II

List of Subjects in 12 CFR Part 227

Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 227 to read as follows:

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (REGULATION AA)

■ 1. The authority citation for part 227 continues to read as follows:

Authority: Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a).

Subpart A—Consumer Complaints

■ 2. Section 227.2—Consumer Complaint Procedure, paragraph (a)(2)(ii) is amended by revising the following Reserve Bank addresses to read as follows:

§ 227.2 Consumer Complaint Procedure.

(a) Submission of complaints.

(2) * * *

(ii) * * *

Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, MA 02210.

* * * * *

Federal Reserve Bank of Philadelphia, 10 Independence Mall, Philadelphia, PA 19106.

* * * * *

Federal Reserve Bank of Atlanta, 1000 Peachtree Street, NE., Atlanta, GA 30309.

Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, IL 60604.

Federal Reserve Bank of St. Louis, P.O. Box 442, St. Louis, MO 63166–0442.

Federal Reserve Bank of Minneapolis, 90 Hennepin Avenue, Minneapolis, MN 55401.

Federal Reserve Bank of Kansas City, 925 Grand Boulevard, Kansas City, MO 64198.

Federal Reserve Bank of Dallas, 2200 North Pearl Street, Dallas, TX 75201.

Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, CA 94105.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 1, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–2124 Filed 3–6–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23271; Airspace Docket No. 05–AWP–15]

RIN 2120–AA66

Establishment of Class E Enroute Domestic Airspace Area, Vandenberg AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes a Class E enroute domestic airspace area, Vandenberg AFB to replace existing Class G uncontrolled airspace.

DATES: *Effective Date:* 0901 UTC July 6, 2006. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before April 6, 2006.

ADDRESSES: Send comments on the direct final rule to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 05–AWP–15, Western Terminal Operations, P.O. Box 92007, Los Angeles, California 90009. The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Western Terminal Operations, at the above address.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Western Terminal Operations Airspace Specialist, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION: This action will establish a Class E enroute domestic airspace area to the south, west and north of Vandenberg AFB, CA, including Restricted Areas 2516 and 2517, and to the west of San Luis Obispo. This Class E enroute domestic airspace will contain aircraft while in Instrument Flight Rules (IFR) conditions under control of Santa Barbara Terminal Radar Approach Control. On November 2, 2005, airspace was transferred from Los Angeles Air Route Traffic Control Center to Santa Barbara Terminal Radar Approach Control. In order to provide positive control of aircraft in these

areas, the airspace must be designated as controlled airspace.

Class E enroute domestic airspace areas are published in Paragraph 6006 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E enroute domestic airspace designation listed in this document would be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comment received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-pubic contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to airspace Docket No. 05–AWP–15.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

Paragraph 6006 Enroute Domestic Airspace Areas.

* * * * *

Lompoc, CA, Vandenberg AFB [Established]

That airspace extending upward from 1200 feet above the surface bounded on the north by Monterey Class E5 airspace, on the east by V27 and Santa Barbara Class E5 airspace, on the south by the northern boundary of Control Area 1176L, and on the west by a line 12 miles from and parallel to the U.S. shoreline and Control Area Pacific Low, excluding Control Area 1155L.

Issued in Los Angeles, California on February 22, 2006.

John Clancy,

Area Director, Western Terminal Operations.

[FR Doc. 06–2111 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22024; Airspace Docket No. 05–AAL–38]

RIN–2120–AA66

Modification of the Norton Sound Low, Woody Island Low and 1234L Offshore Airspace Areas; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Norton Sound Low, Woody Island Low and 1234L Offshore Airspace Areas in Alaska. Specifically, this action modifies the Norton Sound Low Offshore Airspace Area in the vicinity of the Toksook Bay Airport, Toksook Bay, AK, by lowering the Offshore airspace floor to 1,200 feet mean sea level (MSL) within a 35-mile radius from a defined point just south of the airport. This action also modifies the Woody Island Low and 1234L Offshore Airspace Areas in the vicinity of the Chignik Airport, Chignik, AK, by lowering the Offshore airspace floors to 1,200 feet MSL within a 72.8-mile radius from the Chignik

Airport. The additional controlled airspace is necessary for the safety of instrument flight rules (IFR) operations at the Toksook Bay and Chignik Airports.

Effective Date: 0901 UTC, June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 28, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Norton Sound low, Woody Island Low, and 1234L Offshore Control Areas in Alaska (70 FR 76730). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Offshore Airspace Areas are published in paragraph 6007 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Areas listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Norton Sound Low Offshore Airspace Area, AK by lowering the floor to 1,200 feet MSL within a 35-mile radius of a point just south of Toksook Bay Airport, AK. The floor of Woody Island Low and 1234L Offshore Airspace Areas, AK is lowered to 1,200 feet MSL within a 72.8-mile radius of Chignik Airport. This rule establishes controlled airspace to support IFR operations at the Toksook Bay and Chignik Airports, AK. The FAA Instrument Flight Procedures Production and Maintenance Branch developed new instrument approach procedures for the Toksook Bay and Chignik Airports. New controlled airspace extending upward from 1,200 feet MSL above the surface in international airspace is created by this action. This airspace is sufficient to support the safety of IFR operations at the Toksook Bay and Chignik Airports.

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

ICAO Considerations

As part of this rule relates to navigable airspace outside the United States, the notice of this action is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 1,200 MSL within a 45-mile radius of Deering Airport, AK, and within a 35-mile radius of lat. 60°21′17″ N., long. 165°04′01″ W., and airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 62°35′00″ N., long. 175°00′00″ W.; to lat. 65°00′00″ N., long. 168°58′23″ W.; to lat. 68°00′00″ N., long. 168°58′23″ W.; to a point 12 miles offshore at lat. 68°00′00″ N.; thence by a line 12 miles from and parallel to the shoreline to lat. 56°42′59″ N., long. 160°00′00″ W.; to lat. 58°06′57″ N., long. 160°00′00″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning.

* * * * *

Woody Island Low, AK [Amended]

The airspace extending upward from 1,200 MSL within a 72.8-mile radius of Chignik Airport, AK, and that airspace extending upward from 14,500 feet MSL within the area bounded by a line beginning at lat. 53°30′00″ N., long. 160°00′00″ W.; to lat. 56°00′00″ N., long. 153°0′00″ W.; to lat. 56°45′42″ N., long. 151°45′00″ W.; to lat. 58°19′58″ N., long. 148°55′07″ W.; to lat. 59°08′34″ N., long. 147°16′06″ W.; thence clockwise via the arc of a 149.5-mile radius circle centered on the Anchorage, AK, VOR/DME to a point 12 miles offshore; thence southwest by a line 12 miles from and parallel to the shoreline to a

point 12 miles offshore at long. 160°00′00″ W.; to the point of beginning.

* * * * *

1234L [Amended]

The airspace extending upward from 1,200 MSL within a 72.8-mile radius of Chignik Airport, AK, and that airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., south along long. 160°00′00″ W. until it intersects the Anchorage Air Route Traffic Control Center boundary; thence southwest, northwest, north, and northeast along the Anchorage Air Route Traffic Control Center boundary to lat. 62°35′00″ N., long. 175°00′00″ W.; to lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning.

* * * * *

Issued in Washington, DC on February 22, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–2112 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30482; Amdt. No. 3156]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 7, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2006.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125); telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff

Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 24, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 13 April 2006*

Galena, AK, Edward G. Pitka SR, NDB–A, Orig, CANCELLED
Sitka, AK, Sitka Rocky Gutierrez, RNAV (GPS) RWY 11, Orig
Sitka, AK, Sitka Rocky Gutierrez, NDB–A, Amdt 1
Prattville, AL, Prattville-Grouby Field, RNAV (GPS) RWY 9, Amdt 1
Prattville, AL, Prattville-Grouby Field, VOR/DME–A, Amdt 2
Springdale, AR, Springdale Muni, ILS OR LOC RWY 18, Amdt 8
Bakersfield, CA, Meadows Field, RNAV (GPS) RWY 12L, Orig
Santa Barbara, CA, Santa Barbara Muni, Takeoff Minimums and Textual DP, Amdt 7
Cortez, CO, Cortez Muni, RNAV (GPS) Y RWY 21, Orig
Cortez, CO, Cortez Muni, RNAV (GPS) Z RWY 21, Orig
Cortez, CO, Cortez Muni, RNAV (GPS) RWY 21, Orig, CANCELLED
Lamar, CO, Lamar Muni, RNAV (GPS) RWY 36, Amdt 1
Merritt Island, FL, Merritt Island, RNAV (GPS) RWY 11, Amdt 1
Merritt Island, FL, Merritt Island, Takeoff Minimums and Textual DP, Orig
Miami, FL, Kendall-Tamiami Executive, RNAV (GPS) RWY 27L, Orig
Tampa, FL, Vandenberg, RNAV (GPS) RWY 23, Orig
Tampa, FL, Vandenberg, ILS OR LOC RWY 23, Orig
Tampa, FL, Vandenberg, GPS RWY 23, Orig-E, CANCELLED
Tampa, FL, Vandenberg, LOC RWY 23, Orig, CANCELLED
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, Takeoff Minimums and Textual DP, Amdt 2
Boise, ID, Boise Air Terminal/Gowen Fld, ILS OR LOC RWY 10R, Amdt 9, ILS RWY 10R (CAT II)
Chicago, IL, Chicago-Midway Intl, RNAV (GPS) Z RWY 13C, Orig-A
Chicago, IL, Chicago-Midway Intl, RNAV (RNP) Y RWY 13C, Orig
Chicago/Romeoville, IL, Lewis University, LOC RWY 2, Orig
Columbus, IN, Columbus Muni, RNAV (GPS) RWY 5, Orig
Columbus, IN, Columbus Muni, RNAV (GPS) RWY 14, Orig
Columbus, IN, Columbus Muni, RNAV (GPS) RWY 23, Orig
Columbus, IN, Columbus Muni, RNAV (GPS) RWY 32, Orig
Columbus, IN, Columbus Muni, NDB RWY 23, Amdt 11
Fort Wayne, IN, Fort Wayne International, RNAV (GPS) RWY 23, Amdt 1
Olathe, KS, New Century Aircenter, RNAV (GPS) RWY 18, Amdt 2
Olathe, KS, New Century Aircenter, RNAV (GPS) RWY 36, Amdt 2
Topeka, KS, Forbes Field, RNAV (GPS) RWY 13, Orig
Topeka, KS, Forbes Field, RNAV (GPS) RWY 31, Orig
Topeka, KS, Forbes Field, GPS RWY 13, Orig, CANCELLED
Topeka, KS, Forbes Field, GPS RWY 31, Orig, CANCELLED
Mexico, MO, Mexico Memorial, RNAV (GPS) RWY 18, Orig, CANCELLED
Mexico, MO, Mexico Memorial, RNAV (GPS) RWY 36, Orig, CANCELLED
St Louis, MO, Lambert-St Louis Intl, ILS OR LOC RWY 29, Orig
St Louis, MO, Lambert-St Louis Intl, ILS OR LOC RWY 11, ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Orig
St Louis, MO, Lambert-St Louis Intl, ILS OR LOC RWY 12L, ILS RWY 12L (CAT II), ILS RWY 12L (CAT III), Amdt 5
St Louis, MO, Lambert-St Louis Intl, ILS PRM RWY 11, ILS PRM RWY 11 (CAT II), ILS PRM RWY 11 (CAT III), Orig (Simultaneous Close Parallel)
St Louis, MO, Lambert-St Louis Intl, ILS PRM RWY 12L, ILS PRM RWY 12L (CAT II), ILS PRM RWY 12L (CAT III), Orig (Simultaneous Close Parallel)
St Louis, MO, Lambert-St Louis Intl, ILS PRM RWY 29, Orig (Simultaneous Close Parallel)
St Louis, MO, Lambert-St Louis Intl, Takeoff Minimums and Textual DP, Amdt 1
Butte, MT, Bert Mooney, RNAV (GPS) RWY 15, Amdt 1
Bismarck, ND, Bismarck Muni, RNAV (GPS) RWY 3, Amdt 1
Bismarck, ND, Bismarck Muni, RNAV (GPS) RWY 31, Orig
Bismarck, ND, Bismarck Muni, VOR–A, Amdt 20
Bismarck, ND, Bismarck Muni, NDB RWY 31, Amdt 31
Newark, NJ, Newark Liberty Intl, RNAV (GPS) Z RWY 4R, Amdt 1A
Newark, NJ, Newark Liberty Intl, RNAV (GPS) Z RWY 22L, Amdt 1A
Angel Fire, NM, Angel Fire, RNAV (GPS) RWY 17, Amdt 1A
Gallup, NM, Gallup Municipal, RNAV (GPS) RWY 6, Amdt 1
Las Vegas, NM, Las Vegas Muni, RNAV (GPS) RWY 2, Orig-A
Las Vegas, NM, Las Vegas Muni, RNAV (GPS) RWY 20, Orig-A
Las Vegas, NM, Las Vegas Muni, RNAV (GPS) RWY 32, Orig-A
Las Vegas, NM, Las Vegas Muni, VOR RWY 2, Amdt 11A
Las Vegas, NM, Las Vegas Muni, VOR RWY 20, Amdt 6A
Las Vegas, NM, Las Vegas Muni, Takeoff Minimums and Textual DP, Amdt 1
Buffalo, NY, Buffalo Niagara Intl, ILS OR LOC/DME RWY 32, Orig-A
Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) RWY 32, Amdt 1
Oklahoma City, OK, Wiley Post, Takeoff Minimums and Textual DP, Amdt 3
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) RWY 34R, Orig
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) RWY 34L, Orig
Eugene, OR, Mahlon Sweet Field, GPS RWY 34, Orig-C, CANCELLED
Roseburg, OR, Roseburg Regional, Takeoff Minimums and Textual DP, Amdt 5
Mifflintown, PA, Mifflintown, RNAV (GPS) RWY 26, Orig
Mifflintown, PA, Mifflintown, Takeoff Minimums and Textual DP, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) RWY 31, Amdt 1
Houston, TX, George Bush Intercontinental/Houston, RNAV (GPS) RWY 15R, Amdt 1
Houston, TX, George Bush Intercontinental/Houston, ILS OR LOC RWY 15R, Amdt 1
Logan, UT, Logan-Cache, RNAV (GPS) RWY 35, Amdt 2
Moses Lake, WA, Grant County Intl, RNAV (GPS) RWY 32R, Amdt 1
Oak Harbor, WA, Wes Lupien, RNAV (GPS) RWY 7, Orig
Oak Harbor, WA, Wes Lupien, Takeoff Minimums and Textual DP, Orig
Renton, WA, Renton Muni, RNAV (GPS) RWY 15, Amdt 1
Renton, WA, Renton Muni, NDB RWY 15, Amdt 4
Buckhannon, WV, Upshur County Regional, VOR-A, Amdt 1

Buckhannon, WV, Upshur County Regional, RNAV (GPS) RWY 11, Amdt 1
Buckhannon, WV, Upshur County Regional, RNAV (GPS) RWY 29, Amdt 1
Cody, WY, Yellowstone Regional, RNAV (GPS) RWY 22, Amdt 1
Jackson, WY, Jackson Hole, RNAV (GPS) RWY 1, Amdt 1
Riverton, WY, Riverton Regional, RNAV (GPS) RWY 10, Orig
Riverton, WY, Riverton Regional, GPS RWY 10, Orig-A, CANCELLED

** * * Effective 8 June 2006*

Kodiak, AK, Kodiak, NDB RWY 25, Orig, CANCELLED
Beverly, MA, Beverly Muni, NDB–A, Amdt 13, CANCELLED
Pittsfield, MA, Pittsfield Muni, NDB RWY 26, Amdt 4A, CANCELLED
Sanford, ME, Sanford Regional, NDB RWY 7, Amdt 1B, CANCELLED
Waterville, ME, Waterville Robert Lafleur, NDB RWY 5, Amdt 1, CANCELLED
Manchester, NH, Manchester, VOR/DME RNAV RWY 6, Amdt4A, CANCELLED

[FR Doc. 06–2005 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30483; Amdt. No. 3157]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 7, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 2006.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125); telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 24, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
02/09/06	TX	Houston	George Bush Intercontinental/ Houston.	6/1627	ILS or LOC Rwy 8R, Amdt 22
02/10/06	OK	Ponca City	Ponca City Regional	6/1654	NDB Rwy 35 Amdt 4
02/10/06	OK	Perry	Perry Muni	6/1655	VOR/DME Rwy 17 Amdt 3
02/10/06	OK	Blackwell	Blackwell-Tonkawa Muni	6/1656	GPS Rwy 35, Orig
02/10/06	OK	Ponca City	Ponca City Regional	6/1659	VOR A, Amdt 10
02/10/06	OK	Blackwell	Blackwell-Tonkawa Muni	6/1661	GPS Rwy 17, Orig
02/10/06	OK	Ponca City	Ponca City Regional	6/1664	VOR/DME RNAV Rwy 35, Amdt 2A
02/10/06	OK	Ponca City	Ponca City Regional	6/1665	RNAV (GPS) Rwy 35, Orig-A
02/10/06	OK	Perry	Perry Muni	6/1667	GPS Rwy 17, Orig-A
02/10/06	OK	Ponca City	Ponca City Regional	6/1669	RNAV (GPS) Rwy 17 Orig
02/10/06	AR	Stuttgart	Stuttgart Muni	6/1706	RNAV (GPS) Rwy 27, Orig
02/10/06	IN	South Bend Regional	South Bend	6/1770	ILS Rwy 9R, Amdt 8B
02/11/06	OH	Cleveland-Hopkins Intl	Cleveland	6/1771	ILS or LOC Rwy 24L, Amdt 19
02/16/06	TX	Decatur	Decatur Muni	6/1811	VOR/DME Rwy 17, Amdt 2
02/16/06	TX	Bridgeport	Bridgeport Muni	6/1813	VOR/DME Rwy 17, Orig-C
02/15/06	OH	Grimes Field	Urbana	6/1835	RNAV (GPS) Rwy 20, Orig
02/15/06	OH	Grimes Field	Urbana	6/1836	RNAV (GPS) Rwy 2, Orig
02/16/06	WA	Walla Walla	Walla Walla Regional	6/1851	VOR/DME Rwy 2, Orig
02/16/06	TX	Waco	McGregor Executive	6/1952	VOR Rwy 17, Amdt 10B
02/20/06	PA	Allentown	Lehigh Valley Intl	6/2008	ILS or LOC/DME Rwy 24, Orig
02/21/06	NV	Las Vegas	Henderson Executive	6/2058	VOR–C, Orig
02/21/06	PA	Franklin	Venango Regional	6/2156	ILS or LOC Rwy 21, Amdt 5. This replaces FDC 6/1370 FKL published in TL06–06.
02/22/06	TX	Dallas	Addison	6/2183	ILS Rwy 33 Amdt 2
02/22/06	TX	Dallas	Addison	6/2184	ILS Rwy 15 Amdt 10
02/22/06	IA	Cedar Rapids	The Eastern Iowa	6/2200	ILS Rwy 9 Amdt 16
02/22/06	IA	Cedar Rapids	The Eastern Iowa	6/2203	VOR Rwy 9 Amdt 16B
02/22/06	IA	Cedar Rapids	The Eastern Iowa	6/2204	RNAV (GPS) Rwy 9, Orig
02/22/06	IA	Cedar Rapids	The Eastern Iowa	6/2205	RNAV (GPS) Rwy 27, Orig
02/22/06	IA	Cedar Rapids	The Eastern Iowa	6/2207	ILS Rwy 27, Amdt 5
02/22/06	TX	Greenville	Majors	6/2208	LOC BC Rwy 35 Amdt 1
02/22/06	CA	Blythe	Blythe	6/2236	RNAV (GPS) Rwy 26, Orig
02/23/06	OK	Oklahoma City	Will Rogers World	6/2279	ILS or LOC Rwy 17R, Amdt 10
02/23/06	AK	Kotzebue	Ralph Wien Memorial	6/2268	VOR/DME Z Rwy 26, Orig-A

[FR Doc. 06–2002 Filed 3–6–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM06–13–000]

Conditions for Public Utility Market-Based Rate Authorization Holders

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: The document corrects an effective date in a final rule published in the **Federal Register** on February 27, 2006. That action amended Commission regulations to include certain rules governing the conduct of entities authorized to make sales of electricity and related products under market-based rate authorizations.

DATES: Effective February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Frank Karabetsos, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, (202) 502–8273, *Frank.Karabetsos@ferc.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 06–1719 published on February 27, 2006 (71 FR 9698), make the following correction:

On page 9698, in column 2, under the heading **DATES** correct the effective date to read, ''February 27, 2006.''

Magalie R. Salas,

Secretary.

[FR Doc. 06–2153 Filed 3–6–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[CBP Dec. 06–06; USCBP–2006–0012]

RIN 1505–AB64

Dominican Republic—Central America—United States Free Trade Agreement

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Interim rule.

SUMMARY: This document amends the Customs and Border Protection (''CBP'') regulations on an interim basis to set forth the conditions and requirements that apply for purposes of submitting requests to Customs and Border Protection for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the Dominican Republic—Central America—United States Free Trade Agreement.

DATES: *Effective Date:* Interim rule effective on March 7, 2006; comments must be received by May 8, 2006.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2006–0012.
- *Mail:* Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Robert Abels, Textile Operations, Office of Field Operations (202) 344–1959.

Legal aspects: Cynthia Reese, Tariff Classification and Marking Branch, Office of Regulations and Rulings (202) 572–8812.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

Background

The Dominican Republic—Central America—United States Free Trade Agreement (''CAFTA–DR'' or ''Agreement'') was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The U.S. Congress approved the CAFTA–DR in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the ''Act''), Public Law 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*).

Section 205 of the Act implements Article 3.20 of the CAFTA–DR by providing for the retroactive application of the preferential tariff provisions of the Agreement with respect to qualifying textile or apparel goods of eligible CAFTA–DR countries that were entered on or after January 1, 2004, and before the date of entry into force of the Agreement for that country. Specifically, section 205(a) provides that, notwithstanding 19 U.S.C. 1514 or any other provision of law, an entry of a textile or apparel good: (1) Of a CAFTA–DR country that the United States Trade Representative has designated as an eligible country for purposes of section 205; (2) that would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; (3) that was made on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country; and (4) for which customs duties were paid in excess of the applicable rate of duty for that good set out in Annex 3.3 of the Agreement, will be liquidated or reliquidated at the applicable rate of duty for that good set out in Annex 3.3 of the Agreement, and the Secretary of

the Treasury will refund any excess customs duties paid with respect to that entry.

Section 205(b) of the Act provides that the United States Trade Representative will determine which CAFTA–DR countries are eligible countries for purposes of this section and will publish a list of those countries in the **Federal Register**.

Section 205(c) of the Act provides that liquidation or reliquidation may be made under section 205(a) with respect to an entry of a textile or apparel good only if a request therefor is filed with CBP, within such period as CBP shall establish by regulation in consultation with the Secretary of the Treasury, that contains sufficient information to enable CBP: (1) To locate the entry or to reconstruct the entry if it cannot be located; and (2) to determine that the good satisfies the conditions set out in section 205(a).

Section 205(d) states that, as used in section 205, the term ''entry'' includes a withdrawal from warehouse for consumption.

Pursuant to section 205(c) of the Act, CBP, in consultation with the Department of the Treasury, has determined that requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods of an eligible CAFTA–DR country must be filed with CBP by the later of December 31, 2006, or the date that is 90 days after the entry into force of the Agreement with respect to that country. As required by section 205(c) of the Act, CBP is amending the CBP regulations by adding a new Subpart J to Part 10 and new § 10.699 to set forth the time period within which requests for refunds must be submitted to CBP, as well as the other legal conditions and requirements that apply for purposes of requesting refunds pursuant to section 205 of the Act.

It is noted that, in accordance with the recent decision of the U.S. Court of Appeals for the Federal Circuit in *Orlando Foods Corp.* v. *United States*, No. 04–1612 (Federal Cir. Sept. 14, 2005), new § 10.699 provides that any refund of excess customs duties made pursuant to that section will be accompanied by interest from the date of the affected entry.

Inapplicability of Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (''APA'') (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard notice and comment procedures do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. CBP has determined that this interim rule involves a foreign affairs function of the United States because it implements certain preferential tariff treatment provisions of the CAFTA–DR.

In addition, section 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to the public interest. CBP finds that providing notice and public procedure for these regulations would be impracticable, unnecessary, and contrary to the public interest because they set forth procedures that the public needs to know as soon as possible in order to claim the benefit of the retroactive tariff preference provisions of the Act.

Finally, sections 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. For the reasons described above, CBP has determined that these regulations grant an exemption and relieve restrictions and that good cause exists for dispensing with a delayed effective date.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements certain preferential tariff treatment provisions of an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the APA, as described above. For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) on February 22, 2006, under control number 1651–0125.

The collection of information in these regulations is in § 10.699. This information is required in connection with requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the CAFTA–DR and the Act and will be used by CBP to determine eligibility for such refunds under the CAFTA–DR and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 4,000 hours.

Estimated average annual burden per respondent: 96 minutes.

Estimated number of respondents: 2,500.

Estimated annual frequency of responses: 4.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Signing Authority

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

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference Programs, Reporting

and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues, and the specific authority for new Subpart J is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Section 10.699 also issued under Pub. L. 109–53, 119 Stat. 462.

■ 2. Part 10, CBP regulations, is amended by adding a new Subpart J to read as follows:

Subpart J—Dominican Republic—Central America—United States Free Trade Agreement

Retroactive Preferential Tariff Treatment for Textile and Apparel Goods

§ 10.699 Refunds of Excess Customs Duties

(a) *Applicability*. The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR or Agreement) was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The Congress approved the CAFTA–DR in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act), Public Law 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*). Section 205 of the Act provides for the retroactive application of the Agreement and payment of refunds for any excess duties paid with respect to entries of textile and apparel goods of eligible CAFTA–DR countries that meet certain conditions and requirements. Those conditions and requirements are set forth in paragraphs (b) and (c) of this section.

(b) *General.* Notwithstanding 19 U.S.C. 1514 or any other provision of law, and subject to paragraph (c) of this section, a textile or apparel good of an eligible CAFTA–DR country that was entered or withdrawn from warehouse for consumption on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country will be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and CBP will refund any excess customs duties paid with respect to such entry, with interest accrued from the date of entry, provided:

(1) The good would have qualified as an originating good under § 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; and

(2) Customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid.

(c) *Request for liquidation or reliquidation*. Liquidation or reliquidation may be made under paragraph (b) of this section with respect to an entry of a textile or apparel good of an eligible CAFTA–DR country only if a request for liquidation or reliquidation is filed with the CBP port where the entry was originally filed by the later of December 31, 2006, or the date that is 90 days after the date of the entry into force of the Agreement for that country, and the request contains sufficient information to enable CBP:

(1) To locate the entry or to reconstruct the entry if it cannot be located; and

(2) To determine that the good satisfies the conditions set forth in paragraph (b) of this section.

(d) *Definitions*. For purposes of this section:

(1) ''Eligible CAFTA–DR country'' means a country that the United States Trade Representative has determined, by notice published in the **Federal Register**, to be an eligible country for purposes of section 205 of the Act; and

(2) ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

Deborah J. Spero,

Acting Commissioner of Customs and Border Protection.

Approved: February 28, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–2070 Filed 3–6–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Definition of Contribution in Aid of Construction Under Section 118(c)

CFR Correction

In Title 26 of the Code of Federal Regulations, part 1 (§§ 1.61 to 1.169), revised as of April 1, 2005, on page 495, reinstate § 1.118–2 to read as follows:

§ 1.118–2 Contribution in aid of construction.

(a) *Special rule for water and sewerage disposal utilities*—(1) *In general.* For purposes of section 118, the term *contribution to the capital of the taxpayer* includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility that provides water or sewerage disposal services if—

(i) The amount is a contribution in aid of construction under paragraph (b) of this section;

(ii) In the case of a contribution of property other than water or sewerage disposal facilities, the amount satisfies the expenditure rule under paragraph (c) of this section; and

(iii) The amount (or any property acquired or constructed with the amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) *Definitions*—(i) *Regulated public utility* has the meaning given such term by section 7701(a)(33), except that such term does not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(ii) *Water or sewerage disposal facility* is defined as tangible property described in section 1231(b) that is used predominately (80% or more) in the trade or business of furnishing water or sewerage disposal services.

(b) *Contribution in aid of construction*—(1) *In general.* For purposes of section 118(c) and this section, the term *contribution in aid of construction* means any amount of money or other property contributed to a regulated public utility that provides water or sewerage disposal services to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewerage disposal facilities.

(2) *Advances.* A contribution in aid of construction may include an amount of money or other property contributed to

a regulated public utility for a water or sewerage disposal facility subject to a contingent obligation to repay the amount, in whole or in part, to the contributor (commonly referred to as an advance). For example, an amount received by a utility from a developer to construct a water facility pursuant to an agreement under which the utility will pay the developer a percentage of the receipts from the facility over a fixed period may constitute a contribution in aid of construction. Whether an advance is a contribution or a loan is determined under general principles of federal tax law based on all the facts and circumstances. For the treatment of any amount of a contribution in aid of construction that is repaid by the utility to the contributor, see paragraphs (c)(2)(ii) and (d)(2) of this section.

(3) *Customer connection fee*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, a customer connection fee is not a contribution in aid of construction under this paragraph (b) and generally is includible in income. The term *customer connection fee* includes any amount of money or other property transferred to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer. A customer connection fee also includes any amount paid as a service charge for starting or stopping service.

(ii) *Exceptions*—(A) *Multiple customers.* Money or other property contributed for a connection or service line from the utility's main line to the customer's or the potential customer's line is not a customer connection fee if the connection or service line serves, or is designed to serve, more than one customer. For example, a contribution for a split service line that is designed to serve two customers is not a customer connection fee. On the other hand, if a water or sewerage disposal utility treats an apartment or office building as one utility customer, then the cost of installing a connection or service line from the utility's main water or sewer lines serving that single customer is a customer connection fee.

(B) *Fire protection services.* Money or other property contributed for public and private fire protection services is not a customer connection fee.

(4) *Reimbursement for a facility previously placed in service*—(i) *In general.* If a water or sewerage disposal facility is placed in service by the utility before an amount is contributed to the utility, the contribution is not a contribution in aid of construction under this paragraph (b) with respect to the cost of the facility unless, no later than 8½ months after the close of the taxable year in which the facility was placed in service, there is an agreement, binding under local law, that the utility is to receive the amount as reimbursement for the cost of acquiring or constructing the facility. An order or tariff, binding under local law, that is issued or approved by the applicable public utility commission requiring current or prospective utility customers to reimburse the utility for the cost of acquiring or constructing the facility, is a binding agreement for purposes of the preceding sentence. If an agreement exists, the basis of the facility must be reduced by the amount of the expected contributions. Appropriate adjustments must be made if actual contributions differ from expected contributions.

(ii) *Example.* The application of paragraph (b)(4)(i) of this section is illustrated by the following example:

Example. M, a calendar year regulated public utility that provides water services, spent $1,000,000 for the construction of a water facility that can serve 200 customers. M placed the facility in service in 2000. In June 2001, the public utility commission that regulates M approves a tariff requiring new customers to reimburse M for the cost of constructing the facility by paying a service availability charge of $5,000 per lot. Pursuant to the tariff, M expects to receive reimbursements for the cost of the facility of $100,000 per year for the years 2001 through 2010. The reimbursements are contributions in aid of construction under paragraph (b) of this section because no later than 8½ months after the close of the taxable year in which the facility was placed in service there was a tariff, binding under local law, approved by the public utility commission requiring new customers to reimburse the utility for the cost of constructing the facility. The basis of the $1,000,000 facility is zero because the expected contributions equal the cost of the facility.

(5) *Classification by ratemaking authority.* The fact that the applicable ratemaking authority classifies any money or other property received by a utility as a contribution in aid of construction is not conclusive as to its treatment under this paragraph (b).

(c) *Expenditure rule*—(1) *In general.* An amount satisfies the expenditure rule of section 118(c)(2) if the amount is expended for the acquisition or construction of property described in section 118(c)(2)(A), the amount is paid or incurred before the end of the second taxable year after the taxable year in which the amount was received as required by section 118(c)(2)(B), and accurate records are kept of contributions and expenditures as provided in section 118(c)(2)(C).

(2) *Excess amount*—(i) *Includible in the utility's income.* An amount received by a utility as a contribution in aid of construction that is not expended for the acquisition or construction of water or sewerage disposal facilities as required by paragraph (c)(1) of this section (the excess amount) is not a contribution to the capital of the taxpayer under paragraph (a) of this section. Except as provided in paragraph (c)(2)(ii) of this section, such excess amount is includible in the utility's income in the taxable year in which the amount was received.

(ii) *Repayment of excess amount.* If the excess amount described in paragraph (c)(2)(i) of this section is repaid, in whole or in part, either—

(A) Before the end of the time period described in paragraph (c)(1) of this section, the repayment amount is not includible in the utility's income; or

(B) After the end of the time period described in paragraph (c)(1) of this section, the repayment amount may be deducted by the utility in the taxable year in which it is paid or incurred to the extent such amount was included in income.

(3) *Example.* The application of this paragraph (c) is illustrated by the following example:

Example. M, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 2000 for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeded the actual cost of the facility, the contribution was subject to being returned. In 2001, M built the facility at a cost of $700,000 and returned $200,000 to the contributor. As of the end of 2002, M had not returned the remaining $100,000. Assuming accurate records are kept, the requirement under section 118(c)(2) is satisfied for $700,000 of the contribution. Because $200,000 of the contribution was returned within the time period during which qualifying expenditures could be made, this amount is not includible in M's income. However, the remaining $100,000 is includible in M's income for its 2000 taxable year (the taxable year in which the amount was received) because the amount was neither spent nor repaid during the prescribed time period. To the extent M repays the remaining $100,000 after year 2002, M would be entitled to a deduction in the year such repayment is paid or incurred.

(d) *Adjusted basis*—(1) *Exclusion from basis.* Except for a repayment described in paragraph (d)(2) of this section, to the extent that a water or sewerage disposal facility is acquired or constructed with an amount received as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the facility is reduced by the amount of the contribution. To the extent the water or

sewerage disposal facility is acquired as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the contributed facility is zero.

(2) *Repayment of contribution.* If a contribution to the capital of the taxpayer under paragraph (a) of this section is repaid to the contributor, either in whole or in part, then the repayment amount is a capital expenditure in the taxable year in which it is paid or incurred, resulting in an increase in the property's adjusted basis in such year. Capital expenditures allocated to depreciable property under paragraph (d)(3) of this section may be depreciated over the remaining recovery period for that property.

(3) *Allocation of contributions.* An amount treated as a capital expenditure under this paragraph (d) is to be allocated proportionately to the adjusted basis of each property acquired or constructed with the contribution based on the relative cost of such property.

(4) *Example.* The application of this paragraph (d) is illustrated by the following example:

Example. A, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 2000 as an advance from B, a developer, for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeds the actual cost of the facility, the contribution is subject to being returned. Under the terms of the advance, A agrees to pay to B a percentage of the receipts from the facility over a fixed period, but limited to the cost of the facility. In 2001, A builds the facility at a cost of $700,000 and returns $300,000 to B. In 2002, A pays $20,000 to B out of the receipts from the facility. Assuming accurate records are kept, the $700,000 advance is a contribution to the capital of A under paragraph (a) of this section and is excludable from A's income. The basis of the $700,000 facility constructed with this contribution to capital is zero. The $300,000 excess amount is not a contribution to the capital of A under paragraph (a) of this section because it does not meet the expenditure rule described in paragraph (c)(1) of this section. However, this excess amount is not includible in A's income pursuant to paragraph (c)(2)(ii) of this section since the amount is repaid to B within the required time period. The repayment of the $300,000 excess amount to B in 2001 is not treated as a capital expenditure by A. The $20,000 payment to B in 2002 is treated as a capital expenditure by A in 2002 resulting in an increase in the adjusted basis of the water facility from zero to $20,000.

(e) *Statute of limitations*—(1) *Extension of statute of limitations.* Under section 118(d)(1), the statutory period for assessment of any deficiency attributable to a contribution to capital under paragraph (a) of this section does not expire before the expiration of 3 years after the date the taxpayer notifies the Secretary in the time and manner prescribed in paragraph (e)(2) of this section.

(2) *Time and manner of notification.* Notification is made by attaching a statement to the taxpayer's federal income tax return for the taxable year in which any of the reportable items in paragraphs (e)(2)(i) through (iii) of this section occur. The statement must contain the taxpayer's name, address, employer identification number, taxable year, and the following information with respect to contributions of property other than water or sewerage disposal facilities that are subject to the expenditure rule described in paragraph (c) of this section—

(i) The amount of contributions in aid of construction expended during the taxable year for property described in section 118(c)(2)(A) (qualified property) as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received;

(ii) The amount of contributions in aid of construction that the taxpayer does not intend to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received; and

(iii) The amount of contributions in aid of construction that the taxpayer failed to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(f) *Effective date.* This section is applicable for any money or other property received by a regulated public utility that provides water or sewerage disposal services on or after January 11, 2001.

[T.D. 8936, 66 FR 2254, Jan. 11, 2001]

[FR Doc. 06–55510 Filed 3–6–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 003–2006]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Tax Division, is amending 28 CFR part 16 to exempt a newly revised Privacy Act system of records entitled ''Files of Applicants For Attorney and Non-Attorney Positions with the Tax Division, Justice/TAX–003,'' as described in today's notice section of the **Federal Register**, from 5 U.S.C. 552a(c)(3) and (d)(1). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(k)(5). The exemptions are necessary to protect the confidentiality of employment records. The Department also is deleting as obsolete provisions exempting two former Tax Division systems of records: ''Freedom of Information/Privacy Act Request Files, Justice/TAX–004;'' and ''Tax Division Special Project Files, Justice/TAX–005.'' The records in TAX–004 are now covered by a Departmentwide system notice, ''Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals, DOJ–004''. The relevant records in TAX–005 are now part of the revised system entitled ''Criminal Tax Case Files, Special Project Files, Docket Cards, and Associated Records, Justice/TAX–001.''

DATES: *Effective Date:* This final rule is effective March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On November 16, 2005 (70 FR 69486), a proposed rule was published in the **Federal Register** with an invitation to comment. Based on suggestions received, the Department is eliminating the reference to 5 U.S.C. 552a(k)(2) as a basis for exemption, and is removing the exemption from 5 U.S.C. 552a(e)(1).

This rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

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

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, and 9701.

■ 2. Section 16.93 is amended by:
■ a. Removing the first sentence of paragraph (a)(2);
■ b. Revising paragraph (b) introductory text;
■ c. Revising paragraphs (e) and (f).
■ Therefore, amend the section to read as follows:

§ 16.93 Exemption of Tax Division Systems—limited access.

* * * * *

(b) The system of records listed under paragraph (a)(1) of this section is exempted for the reasons set forth below, from the following provisions of 5 U.S.C. 552a:

* * * * *

(e) The following system of records is exempt from subsections (c)(3) and (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5): Files of Applicants for Attorney and Non-Attorney Positions with the Tax Division, Justice/TAX–003. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because an accounting could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a position with the Tax Division. Disclosure of an accounting could reveal the identity of a source of information and constitutes a breach of the promise of confidentiality by the Tax Division. This would result in the reduction in the free flow of information vital to a determination of an applicant's qualifications and suitability for federal employment.

(2) From subsection (d)(1) because disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a Tax Division position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Tax Division. Such breaches ultimately would restrict the free flow of information vital to a determination of an applicant's qualifications and suitability.

Dated: February 27, 2006.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 06–2115 Filed 3–6–06; 8:45 am]

BILLING CODE 4410–16–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Fee Schedule

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or the Commission) is adopting revisions to its Privacy Act fee schedule. The updated schedule of fees conforms to EEOC's Freedom of Information Act (FOIA) fee schedule which was recently updated (70 FR 57510 of October 3, 2005).

DATES: *Effective Date:* March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Michelle Zinman, Senior General Attorney at (202) 663–4640 (voice) or (202) 663–7026 (TTY). This notice of final rule is also available in the following formats: Large print, Braille, audiotape and electronic file on computer disk. Requests for this notice of final rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: On December 12, 2005, at 70 FR 73413, the EEOC published a notice of proposed rulemaking proposing to amend 29 CFR 1611.11 which concerns the fees assessed to persons who request records under the Privacy Act, 5 U.S.C. 552a. The changes conform the fees charged under the Privacy Act to the fees charged under the FOIA. See 29 CFR 1610.15, as amended by 70 FR 57510 (2005). Comments from the public were due on or before January 11, 2006. No comments were received. Therefore, EEOC is adopting the proposed revisions, without change, as its final rule.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Regulatory Flexibility Act

The Commission, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or 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 were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 29 CFR Part 1611

Privacy Act.

Dated: March 1, 2006.

For the Commission.

Cari M. Dominguez,

Chair.

■ Accordingly, for the reasons set forth in the preamble, EEOC amends 29 CFR part 1611 as follows:

PART 1611—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 1611.11 is revised to read as follows:

§ 1611.11 Fees.

(a) No fee shall be charged for searches necessary to locate records. No charge shall be made if the total fees authorized are less than $1.00. Fees shall be charged for services rendered under this part as follows:

(1) For copies made by photocopy—$0.15 per page (maximum of 10 copies). For copies prepared by computer, such as tapes or printouts, EEOC will charge the direct cost incurred by the agency, including operator time. For other forms

of duplication, EEOC will charge the actual costs of that duplication.

(2) For attestation of documents—$25.00 per authenticating affidavit or declaration.

(3) For certification of documents—$50.00 per authenticating affidavit or declaration.

(b) All required fees shall be paid in full prior to issuance of requested copies of records. Fees are payable to ''Treasurer of the United States.''

[FR Doc. 06–2113 Filed 3–6–06; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC96

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Minimum Blowout Prevention (BOP) System Requirements for Well-Workover Operations Performed Using Coiled Tubing With the Production Tree in Place

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule upgrades minimum blowout prevention and well control requirements for well-workover operations on the OCS performed using coiled tubing with the production tree in place. Since 1997, there have been eight coiled tubing-related incidents on OCS facilities. The rule helps prevent losses of well control, and provides for increased safety and environmental protection.

DATES: *Effective Date:* This rule becomes effective on April 6, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph R. Levine, Offshore Regulatory Programs, at (703) 787–1033, Fax: (703) 787–1555, or e-mail at *joseph.levine@mms.gov*.

SUPPLEMENTARY INFORMATION: On June 22, 2004, MMS published a Notice of Proposed Rulemaking (69 FR 34625), titled ''Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Minimum Blowout Prevention (BOP) System Requirements for Well-Workover Operations Performed Using Coiled Tubing with the Production Tree in Place.'' The proposed rule had a 60-day comment period that closed on August 23, 2004.

Comments on the Rule

MMS received two sets of comments on the proposed rule. The comments came from the Offshore Operators Committee (OOC) and Halliburton, an oilfield service company and are posted at: *http://www.mms.gov/federalregister/PublicComments/rulecomm.htm.* Both sets of comments addressed specific technical issues related to coiled tubing operations.

I. OOC Comments on Specific Sections

Comment on section 250.615(e)(1): OOC suggested that the ''Kill line outlet'' reference should be the ''Kill line inlet.'' This line is used for pumping kill fluid into the well and is not commonly used to flow out of the well.

Response: MMS agrees with the suggestion, and revised the requirement.

Comment on section 250.615(e)(5): OOC commented that the requirement for hydraulically controlled valves on both lines could be onerous for some situations, such as [plugged and abandoned] operations on dead or depleted wells with less than 3,500 expected pounds per square inch (psi) surface pressure.'' They suggested wording should be added to allow exceptions in special situations that would allow leaving the hydraulic actuation requirement off and using manual valves. ''Some circumstances require the ability to flow back from both sides of the flow cross unit.'' An operator should be allowed to comply by using dual full-opening valves on the kill line inlet. They asked, ''Would this BOP rig up configuration comply with this clause?'' Also, the commenter questioned the ''* * * need to require one valve to be remotely controlled in all BOP rig up cases.'' The commenter further suggested, ''Possibly for wells with no H_2S, or for those wells which have lower wellhead pressures, the use of dual manual valves could be sufficient.''

Response: MMS agrees that two manual valves can be used on the kill line for all situations provided that a check valve is placed between the manual valves and the pump or manifold. However, the choke line needs to be equipped with two full-opening valves with at least one of these valves being remotely controlled for all operations.

MMS does not consider it a safe practice to use the kill line to flow back fluids through the flow cross because the purpose of the kill line is to pump clean fluids into the wellbore. If the kill line is used to flow back fluids from the well, these well fluids may contain well debris that could erode critical safety equipment.

Comment on section 250.615(e)(5): The proposed provision states, ''For operations with expected surface pressure of 3,500 psi or greater, the kill line must be connected to a pump.'' OOC recommended that this statement be amended to read: ''For operations with expected surface pressure of 3,500 psi or greater, the kill line must be connected to a pump or manifold.''

Response: MMS agrees with the suggestion and revised the requirement. In a well control situation, having the kill line connected to a manifold provides an equivalent degree of protection to both personnel and the environment as having the kill line connected to a pump.

Comment on section 250.615(e)(7): The proposed provision states, ''All connections used in the surface BOP system must be flanged.'' OOC asked MMS to clarify that the statement means the equipment shown in the table and does not include kill or flow lines. OOC recommended that all riser connections from wellhead to below the stripper must be flanged when expected surface pressures are greater than 3,500 psi. OOC also recommended that if the expected surface pressure is less than 3,500 psi, the BOP kill inlet valves can be full-opening manual plug (hammer union type) valves.

Response: MMS has modified 30 CFR 250.615 (e)(7) to clarify the flanging requirement for the BOP system. All connections in the surface BOP system from the tree to the uppermost required ram, as included in the table at § 250.615(e)(1), need to be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and kill line. This configuration needs to be adhered to for all expected surface pressures. Flanged connections provide better pressure integrity than hammer union type connections. Hammer union type connections are not allowed between the well control stack and the first full-opening valve on either the choke line or the kill line.

Comment on section 250.616(a)(2): The proposed provision states, ''Ram-type BOPs, related control equipment, including the choke and kill manifolds, and safety valves must be successfully tested to the rated working pressure of the BOP equipment or as otherwise approved by the District Manager.'' OOC recommended that this clause be changed to state, ''Ram-type BOPs, related control equipment, including the choke and kill manifolds, and safety valves must be successfully tested to 1,500 psi above the maximum expected

shut in wellhead pressure (not to exceed the wellhead working pressure), or as otherwise approved by the District Manager.''

Response: MMS did not make the suggested change. The requirement to test the rams, related control equipment, manifolds, and safety valves to the equipments' rated working pressure is viewed as an industry best practice by the offshore oil and gas community. If operators want to test this equipment to a lower pressure than its rated working pressure, they must provide the MMS District Manager with appropriate justification.

Comment on section 250.616(a)(2): The proposed provision states, ''Variable bore rams must be pressure tested against all sizes of drill pipe in the well, excluding drill collars.'' The commenter stated that this should not apply to coiled tubing functions and is a holdover from the source document used in writing this rule. OOC recommended that this be deleted.

Response: MMS agrees with the comment and changed the variable bore pipe rams requirement to provide for pressure testing on tubulars including jointed and seamless pipe.

Comment on section 250.616(f): OOC requested ''* * * that the required pressure test duration on coiled tubing BOP tests be changed from 10 minutes to 5 minutes. The American Petroleum Institute (API) Coiled Tubing Committee originally agreed on the 10-minute duration and then, after further discussion, agreed that it should be changed back to 5 minutes. The recommended change to 5 minutes would save approximately ½ hour of testing each week.''

Response: MMS did not make the suggested change. MMS believes that a 10-minute pressure test of the coiled tubing string more accurately shows string integrity than a 5-minute test. In such a test, it may take longer then 5 minutes to pressurize the entire string, depending on the length of the coiled tubing string, to accurately evaluate its integrity. MMS is aware of the discussions that the API Well Intervention Well Control Task Group had concerning this topic. Though the Task Group agreed to return to a 5-minute testing requirement, it was clear during the discussions that not every representative agreed with the change.

II. Halliburton Comments on Specific Sections

Comment on section 250.615(e)(1): ''According to the proposed text, the blind-shear rams are required to be the lowermost rams.'' If an operator places ''* * * a set of dual combination rams below a flow cross, it would be a preference to have the pipe-slip combination ram as the lowermost ram to enable holding the cut coiled tubing. From the provided text, it may stand to reason that the primary objective is to have a blind-shear ram configuration as part of the BOP system and the sequential order is of less importance.''

Response: MMS agrees with the suggestion and modified the table to reflect this change. Operators will have the option to place either the pipe rams or the blind-shear rams as the lowermost rams.

Comment on section 250.615(e)(5): ''The placement of the two full-opening valves is vague and left to interpretation. Connecting the valves to the well control stack could be accomplished by either directly to the stack or with 30 feet of connection line. A check valve in the kill line might need to be considered as a component requirement.''

Response: MMS agrees with the comment that the placement of the two full-opening valves on both the choke line and the kill line is vague. We modified the wording to require that the kill line and choke line valves be installed between the well control stack and the respective line.

If a check valve is used on the kill line of the BOP stack, it needs to be placed between two manual valves and the pump. If the check valve is used, it is considered a component of the BOP system and should be treated accordingly with regard to testing.

Comment on section 250.615(e)(7): ''Lubricator sections are normally acceptable pressure containment devices and employ quick connections as end connections. Is the placement of the lubricator below the stripper well control component and above the Quad Ram function an acceptable configuration?''

Response: Yes, placement of the lubricator below the stripper well control component and above the uppermost required ram is an appropriate and common configuration.

Comment on section 250.616(a): ''There could be some confusion regarding the pressure test amount for the stripper well components. Are stripper well components classified as related control equipment?''

Response: MMS agrees that the proposed rule could be confusing concerning the pressure testing requirements for the stripper. Therefore, we changed the wording in this section to reflect that strippers need to be tested like other BOP components.

Comment on section 250.616(f): ''There could be some confusion regarding the test period. Is the coiled tubing pipe the only 10-minute test interval, and the rest of the BOP system components a 5-minute test interval requirement?''

Response: MMS agrees that the proposed rule could be confusing in regards to the required pressure test period for the coiled tubing string. We changed the regulation to indicate that the 10-minute pressure test is just for the coiled tubing string.

Differences Between Proposed and Final Rules Not Directly Related to Comments

In addition to changes we made in the rule in response to public comments, MMS has reworded several sections in the final rule to further clarify the requirements. The following are the changes by section:

Section 250.615(e)(1)—We expanded the title of the first column in the table to reflect a pressure range of less than or equal to 3,500 psi. This change more accurately reflects our intentions.

Section 250.615(e)(1)—We removed the requirement to have two sets of hydraulically-operated pipe rams for BOP configurations when expected surface pressures are greater than 3,500 psi. This change corrects an oversight.

Section 250.616(a)—We removed the word ''sequentially'' from the last sentence of this section so that the testing of the choke and kill manifold valves does not need to be conducted in any predetermined order.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This is not a significant rule under Executive Order 12866, and does not require review by the Office of Management and Budget (OMB).

a. The final rule will not have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The final rule will not create an adverse effect upon the ability of the United States offshore oil and gas industry to compete in the world marketplace, nor will the final rule adversely affect investment or employment factors locally. The economic effects of the rule will not be significant. This rule will not add significant dollar amounts to the cost of each well-workover operation involving the use of coiled tubing with the production tree in place. During February 2003, MMS surveyed, by

phone, five of the eight coiled tubing operating companies working on the OCS to collect information on the impact this rule would have on their operations. All data indicates that these offshore coiled tubing companies have upgraded their field procedures and equipment to the same or a similar process as that required under the final rule. None of the companies in this survey could provide dollar values for the implementation of this rule because they had incorporated most of the suggested measures into their work processes in 1999. Some of the coiled tubing operating companies contacted are already using dual check valves in the bottom of their coiled tubing string. According to these companies, this practice was put into place several years ago for OCS operations. For these reasons, MMS concluded that direct annual costs to industry for the final rule will have a minor economic effect on the offshore oil and gas industry.

b. This rule will not create inconsistencies with other agencies' actions. The rule does not change the relationships of the OCS oil and gas leasing program with other agencies. These relationships are all encompassed in agreements and memoranda of understanding that will not change with this final rule.

c. This final rule will not affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule includes specific well-workover process standards to prevent accidents and environmental pollution on the OCS.

d. This rule will not raise novel legal or policy issues. There is a precedent for actions of this type under regulations dealing with the Outer Continental Shelf Lands Act and the Oil Pollution Act of 1990.

Regulatory Flexibility Act (RFA)

MMS has determined that this final rule will not have a significant economic effect on a substantial number of small entities. While the rule will affect some small entities, the economic effects of the rule will not be significant.

The regulated community for this rule consists of about eight companies specializing in offshore oil and gas coiled tubing technologies. Of these companies, three are considered to be ''small.'' The small companies to be affected by this rule are all represented by the North American Industry Classification System (NAICS) Code 211111 (crude petroleum and natural gas extraction).

MMS's analysis of the economic impacts of this final rule indicates that direct implementation costs to both large and small companies cannot be accurately assessed because the industry has already implemented most of the technological requirements required in this final rule. Regardless of company size, the final rule will have a minor economic effect on some oil and gas offshore platform operators on the OCS. In the overwhelming majority of cases, operators choose to perform improved and safer well-workover procedures involving coiled tubing operations on their own initiative, not because of an MMS safety inspection or regulation. The final rule will add relatively little to the cost of a well-workover operation. Thus, there will not be a significant impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The rule will not cause the business practices of the majority of these companies to change.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free at (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. The rule will not significantly increase the cost of well-workovers. If there is an increase, it is not a large cost compared to the overall cost of a well-workover. Moreover, it may significantly reduce the possibility of a fatal or environmentally damaging accident during the course of a well-workover. Such an accident could be economically disastrous for a small entity. Based on economic analysis:

a. This rule does not have an annual effect on the economy of $100 million or more. As indicated in MMS's cost analysis, direct annual costs to industry for the rule could not be assessed adequately. The final rule will have a minor economic effect on the offshore oil and gas industries.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act (PRA) of 1995

The final revisions to 30 CFR part 250, subpart F, Oil and Gas Well-Workover Operations, do not change the information collection requirements in current regulations.

OMB has approved the referenced information collection requirements under OMB control numbers 1010–0043 (expiration date October 31, 2007) for 30 CFR 250 subpart F and 1010–0141 (expiration date August 31, 2008) for subpart D Drilling, Form MMS–124, Application for Permit to Modify. The revised sections in the final rule do not affect the currently approved burdens (19,459 approved hours for 1010–0043 and 163,714 for 1010–0141). Therefore, an information collection request (form OMB 83–I) has not been submitted to OMB for review and approval under section 3507(d) of the PRA.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not contain any unfunded mandates to state, local, or tribal governments; nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the $100 million threshold for any year that was established by UMRA.

Takings Implications Assessment (Executive Order 12630)

The Department of the Interior (DOI) certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

DOI has certified to OMB that this regulation meets the applicable civil justice reform standards provided in sections 3(a) and 3(b) (2) of Executive Order 12988.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have significant Federalism effects. This rule does not change the role or responsibilities of federal, state, and local governmental entities. The rule does not relate to the structure and role of states, and will not have direct, substantive, or significant effects on states.

National Environmental Policy Act (NEPA) of 1969

MMS has analyzed this rule according to the criteria of NEPA and 516 Departmental Manual 6, Appendix

10.4C. MMS reviewed the criteria of the Categorical Exclusion Review (CER) for this action during February 2003, and concluded that this rulemaking does not represent an exception to the established criteria for categorical exclusion, and that its impacts are limited to administrative, economic, or technological effects. Therefore, preparation of an environmental document is not required, and further documentation of this CER is not required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, this final rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental protection, Investigations, Oil and gas exploration, Oil and gas reserves, Pipelines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: February 17, 2006.

R. M. "Johnnie" Burton,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons stated in the preamble, MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*, 31 U.S.C. 9701.

■ 2. In § 250.601, add the following definition for expected surface pressure in alphabetical order:

§ 250.601 Definitions.

Expected surface pressure means the highest pressure predicted to be exerted upon the surface of a well. In calculating expected surface pressure, you must consider reservoir pressure as well as applied surface pressure.

* * * * *

■ 3. In § 250.615, revise paragraph (e) of the section to read as follows:

§ 250.615 Blowout prevention equipment.

* * * * *

(e) For coiled tubing operations with the production tree in place, you must meet the following minimum requirements for the BOP system:

(1) BOP system components must be in the following order from the top down:

BOP system when expected surface pressures are less than or equal to 3,500 psi	BOP system when expected surface pressures are greater than 3,500 psi	BOP system for wells with returns taken through an outlet on the BOP stack
Stripper or annular-type well control component	Stripper or annular-type well control component.	Stripper or annular-type well control component.
Hydraulically-operated blind rams	Hydraulically-operated blind rams	Hydraulically-operated blind rams.
Hydraulically-operated shear rams	Hydraulically-operated shear rams	Hydraulically-operated shear rams.
Kill line inlet	Kill line inlet	Kill line inlet.
Hydraulically-operated two-way slip rams	Hydraulically-operated two-way slip rams	Hydraulically-operated two-way slip rams.
Hydraulically-operated pipe rams	Hydraulically-operated pipe rams.	A flow tee or cross.
	Hydraulically-operated blind-shear rams. These rams should be located as close to the tree as practical.	Hydraulically-operated pipe rams.
		Hydraulically-operated blind-shear rams on wells with surface pressures >3,500 psi. As an option, the pipe rams can be placed below the blind-shear rams. The blind-shear rams should be located as close to the tree as practical.

(2) You may use a set of hydraulically-operated combination rams for the blind rams and shear rams.

(3) You may use a set of hydraulically-operated combination rams for the hydraulic two-way slip rams and the hydraulically-operated pipe rams.

(4) You must attach a dual check valve assembly to the coiled tubing connector at the downhole end of the coiled tubing string for all coiled tubing well-workover operations. If you plan to conduct operations without downhole check valves, you must describe alternate procedures and equipment in Form MMS–124, Application for Permit to Modify and have it approved by the District Manager.

(5) You must have a kill line and a separate choke line. You must equip each line with two full-opening valves and at least one of the valves must be remotely controlled. You may use a manual valve instead of the remotely controlled valve on the kill line if you install a check valve between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and you must install them between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. You must not use the kill line inlet on the BOP stack for taking fluid returns from the wellbore.

(6) You must have a hydraulic-actuating system that provides sufficient accumulator capacity to close-open-close each component in the BOP stack. This cycle must be completed with at least 200 psi above the pre-charge pressure, without assistance from a charging system.

(7) All connections used in the surface BOP system from the tree to the uppermost required ram must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

* * * * *

■ 4. Amend § 250.616 by revising paragraph (a); redesignating paragraphs (d) and (e) as paragraphs (f) and (g); adding new paragraphs (d) and (e); and revising redesignated paragraph (f) to read as follows:

§ 250.616 Blowout preventer system testing, records, and drills.

(a) *BOP Pressure Tests.* When you pressure test the BOP system you must conduct a low-pressure test and a high-pressure test for each component. You must conduct the low-pressure test before the high-pressure test. For purposes of this section, BOP system components include ram-type BOP's, related control equipment, choke and kill lines, and valves, manifolds, strippers, and safety valves. Surface

BOP systems must be pressure tested with water.

(1) *Low Pressure Tests.* All BOP system components must be successfully tested to a low pressure between 200 and 300 psi. Any initial pressure equal to or greater than 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero before starting the test.

(2) *High Pressure Tests.* All BOP system components must be successfully tested to the rated working pressure of the BOP equipment, or as otherwise approved by the District Manager. The annular-type BOP must be successfully tested at 70 percent of its rated working pressure or as otherwise approved by the District Manager.

(3) *Other Testing Requirements.* Variable bore pipe rams must be pressure tested against the largest and smallest sizes of tubulars in use (jointed pipe, seamless pipe) in the well.

* * * * *

(d) You may conduct a stump test for the BOP system on location. A plan describing the stump test procedures must be included in your Form MMS–124, Application for Permit to Modify, and must be approved by the District Manager.

(e) You must test the coiled tubing connector to a low pressure of 200 to 300 psi, followed by a high pressure test to the rated working pressure of the connector or the expected surface pressure, whichever is less. You must successfully pressure test the dual check valves to the rated working pressure of the connector, the rated working pressure of the dual check valve, expected surface pressure, or the collapse pressure of the coiled tubing, whichever is less.

(f) You must record test pressures during BOP and coiled tubing tests on a pressure chart, or with a digital recorder, unless otherwise approved by the District Manager. The test interval for each BOP system component must be 5 minutes, except for coiled tubing operations, which must include a 10 minute high-pressure test for the coiled tubing string. Your representative at the facility must certify that the charts are correct.

* * * * *

[FR Doc. 06–2101 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 050630175–6039–02; I.D. 010305B]

RIN 0648–AS98

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from BP Exploration (Alaska), (BP), is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to operation of an offshore oil and gas platform at the Northstar facility in the Beaufort Sea in state waters. Issuance of regulations, and Letters of Authorization (LOAs) under these regulations, governing the unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize BP's oil development activities as such authorization is not within the jurisdiction of the Secretary. Rather, NMFS' regulations together with Letters of Authorization (LOAs) authorize the unintentional incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

DATES: Effective from April 6, 2006 through April 6, 2011.

ADDRESSES: A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning one of the contacts listed under **FOR FURTHER INFORMATION CONTACT**, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*

Documents cited in this final rule may also be viewed, by appointment, during regular business hours at this address.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via the means stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503, *David__Rostker@eap.omb.gov*.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128 or Brad Smith, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

An authorization may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which

(i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

In 1999, BP petitioned NMFS to issue regulations governing the taking of small numbers of whales and seals

incidental to oil and gas development and operations in arctic waters of the United States. That petition was submitted pursuant to section 101(a)(5)(A) of the MMPA. Regulations were promulgated by NMFS on 25 May 2000 (65 FR 34014). These regulations authorize the issuance of annual LOAs for the incidental, but not intentional, taking of small numbers of six species of marine mammals in the event that such taking occurred during construction and operation of an oil and gas facility in the Beaufort Sea offshore from Alaska. The six species are the ringed seal (*Phoca hispida*), bearded seal (*Erignathus barbatus*), spotted seal (*Phoca largha*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), and beluga whale (*Delphinapterus leucas*). To date, LOAs have been issued on September 18, 2000 (65 FR 58265, September 28, 2000), December 14, 2001 (66 FR 65923, December 21, 2001), December 9, 2002 (67 FR 77750, December 19, 2002), December 4, 2003 (68 FR 68874, December 10, 2003) and December 6, 2004 (69 FR 71780, December 10, 2004). The last LOA expired on May 25, 2005, when the regulations expired.

On August 30, 2004, BP requested authorization to take small numbers of marine mammals incidental to operation of an offshore oil and gas platform at the Northstar facility in the Beaufort Sea in state waters. Because the previous regulations have expired, this will require new regulations to be promulgated. Although injury or mortality is unlikely during routine oil production activities, BP requests that the LOA authorize a small number of incidental, non-intentional, injurious or lethal takes of ringed seals in the unlikely event that they might occur. A copy of this application can be found at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*

Description of the Activity

BP is currently producing oil from an offshore oil and gas facility in the Northstar Unit. This development is the first in the Beaufort Sea that makes use of a subsea pipeline to transport oil to shore and then into the Trans-Alaska Pipeline System. The Northstar facility was built in State of Alaska waters approximately 6 statute miles (9.6 km) north of Point Storkersen and slightly less than 3 nautical miles (nm; 5.5 km) from the closest barrier island. It is located adjacent to Prudhoe Bay, and is approximately 54 mi (87 km) northeast of Nuiqsut, an Inupiat community. The main facilities associated with Northstar include a gravel island work surface for drilling and oil production facilities, and two pipelines connecting the island to the existing infrastructure at Prudhoe Bay. One pipeline transports crude oil to shore, and the second imports gas from Prudhoe Bay for gas injection and power generation at Northstar. Permanent living quarters and supporting oil production facilities are also located on the island. The construction of Northstar began in early 2000, and continued through 2001. Well drilling began on December 14, 2000 and oil production commenced on October 31, 2001. The well-drilling program ended in May, 2004 and the drill rig either will be demobilized by barge or kept on the island for potential future well-workover or other drilling activities (BP, 2005). Although future drilling is not specifically planned, additional wells or well work-over may be required at some time in the future. Oil production will continue beyond the 5–year period of the requested authorization. A more detailed description of past, present and future activities at Northstar can be found in BP's application and in Williams and Rodrigues (2004). Both documents can be found on the NMFS web-site (see **ADDRESSES**).

Comments and Responses

On September 23, 2004 (69 FR 56995), NMFS published a notice of receipt of BP's application for an incidental take authorization and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30–day public comment period, NMFS received comments from several organizations. NMFS responded to those comments on July 25, 2005 (70 FR 42420) in conjunction with issuance of proposed rulemaking on this action. During the 30–day public comment period on the proposed rule, NMFS received comments from BP, the Marine Mammal Commission (Commission), the Minerals Management Service (MMS), the Alaska Eskimo Whaling Commission (AEWC), the Trustees for Alaska (Trustees, on behalf of themselves, the Sierra Club and the Northern Alaska Environmental Center), and one citizen. BP comments are not addressed in this section but are noted elsewhere in this document and referenced as BP (2005). The AEWC notes its appreciation for the work that BP has put into its application, that NMFS has put into the preparation of the draft 5–year regulations and looks forward to continuing its cooperative relationship with both BP and NMFS.

In that regard, NMFS notes that, in accordance with its regulations (50 CFR 216.107(a)(3)), it convenes a scientific peer-review meeting annually to discuss, in addition to other MMPA authorizations, the results of the Northstar monitoring program and suggested improvements to that program. The 2005 peer-review meeting was held on May 10–12, 2005 in Anchorage, AK and included discussion on the Alaska North Slope Borough's (NSB) Science Advisory Committee (SAC) review of the comprehensive report on monitoring conducted at Northstar under the previous regulations (Richardson and Williams [eds], 2004), and the current BP application and monitoring plan, as discussed later in this document.

MMPA Concerns

Comment 1: The AEWC requested clarification of NMFS using the term ''Northstar Oil and Gas Development'' in 50 CFR 216.200(a)(1). While the specified geographic region would appear to be ''state and/or Federal waters of the Beaufort Sea,'' the phrase ''specified in paragraph (a) of this section'' would seem to indicate a localized area around Northstar.

Response: The regulations were designed to include all oil and gas development (but not oil exploration) activities within the U.S. Beaufort Sea. The ''specified geographic region'' designation required by section 101(a)(5)(A) of the MMPA is ''state and/or Federal waters of the Beaufort Sea.'' The applicant that is taking marine mammals in this case is the Northstar Oil and Gas Development project within that region.

Comment 2: The Trustees state that the Secretary must consider all past, present, and future activities that may affect a marine mammal species or stock to determine whether proposed operations have a ''negligible impact on such species and stock.'' The Trustees state that NMFS has not evaluated all activities that have occurred and may occur in the Beaufort Sea during the effective term of potential regulations that will add considerable noise disturbance and oil spill risks, including additional seismic exploration and drilling activities, barge traffic, hovercraft traffic, helicopter noise, and other aircraft traffic and noise. Past noise disturbances (including seismic or other geological or geophysical surveys related to a potential ''over-the-top'' offshore pipeline route) that occurred during the fall bowhead whale migratory season have not been adequately assessed. In the future, seismic surveys may be proposed related to lands in upcoming lease sales in state and Federal offshore waters and

for additional pipeline routes. NMFS must assess the cumulative effects of these disturbances. Similarly, the AEWC states that NMFS must review cumulative effects in its review of Incidental Take applications if the Secretary is to continue to fulfill the statutory requirements of the MMPA.

Response: MMPA section 101(a)(5)(A) requires the Secretary to issue an incidental take authorization for a specified activity, provided the requisite findings (including negligible impact) are made. There is nothing in the plain language of the provision or in NMFS' implementing regulations that requires a cumulative effects analysis in connection with issuing an incidental take authorization. We also note the legislative history on this section of the MMPA makes no mention of cumulative effects analyses. To the extent required under the National Environmental Policy Act (NEPA), NMFS considers cumulative impacts when it prepares environmental analyses for marine mammal incidental take applications (see 40 CFR 1508.25(c) and 1508.7). However, while the MMPA does not require an analysis of the impacts from non-related activities, such as seismic, the potential for cumulative impacts by offshore oil development and seismic activity on the subsistence lifestyle of the North Slope residents remains a concern and is being addressed, as appropriate, under NEPA.

For most activities mentioned in the Trustees' comment, discussion was provided in the supporting Final Environmental Impact Statement (FEIS) (Corps, 1999) for Northstar. Where the Corps' FEIS did not address a certain activity and an additional NEPA analysis is warranted, NMFS prepares such documentation. For example, NMFS prepared an Environmental Assessment (EA) for additional seismic surveys in the Beaufort Sea (see 65 FR 21720, April 24, 2000); the National Science Foundation prepared and released for public comment an EA for scientific seismic activities in the Arctic Ocean (see 70 FR 47792, August 15, 2005 wherein NMFS issued a Finding of No Significant Impact); and MMS is currently preparing a Programmatic EA for multiple seismic surveys in the Beaufort and Chukchi seas in 2006. In compliance with the NEPA, these EAs all address cumulative impacts. For the ''over-the-top'' pipeline survey, that survey was conducted in 2001 under an Incidental Harassment Authorization (IHA) (see 66 FR 42515, August 13, 2001). An analysis conducted under NEPA by NMFS concluded that the activity was Categorically Excluded since it was the only seismic activity being conducted in the Beaufort Sea that year, that noise-related impacts were adequately addressed in the 2000 EA, and the 2001 survey would have lower impacts on the environment than those previously addressed activities. Future over-the-top surveys remain speculative at this time and do not need to be addressed further. Although impacts from use of a hovercraft, a recent additional mode of transportation at Northstar, have not been specifically analyzed, it replaced other forms of transportation (that were analyzed) that have a greater potential impact on the marine environment.

Marine Mammal Concerns

Comment 3: The AEWC appreciates NMFS' clarification that the Alaskan Beaufort Sea is both migratory and feeding habitat. The AEWC would appreciate a formal acknowledgment, or similar statement, of this finding in the preamble to the final rule.

Response: As mentioned in response to comment (RTC) 3 in the proposed rule, Lowry and Sheffield (2002) in Richardson and Thomson [ed]. (2002) concluded that coastal waters of the Alaskan Beaufort Sea should be considered as part of the bowheads' normal summer-fall feeding range. They reported that of the 29 bowheads harvested at Kaktovik (east of the Northstar facility) between 1986 and 2000 and analyzed for stomach contents, at least 83 percent had been feeding prior to death. Of the 90 bowheads analyzed that had been harvested near Barrow (west of the Northstar facility) during the fall hunt, at least 75 percent had been feeding prior to death. Wursig *et al.* (2002) (in Richardson and Thomson (2002)) found that bowheads in the eastern Beaufort Sea between Flaxman Island (146° W lat.) and Herschel (139° W lat.) Island that feeding was the most common activity in September/early October in most years studied (34 percent overall), followed by traveling (31 percent), socializing (18 percent) and other activities (4 percent). Overall however, the importance of the eastern Beaufort Sea area for late-summer feeding by bowheads varied considerably from year to year. The estimated proportion of time spent feeding during late summer and autumn ranged from 9 to 66 percent in different years (Lowry and Sheffield, 2002). Overall, Richardson and Thomson (2002) indicate that bowheads spent too little time in the eastern Beaufort study area for only a short period in late summer/fall, averaging about 4 days. That, they state, is too little time to allow the average bowhead to consume more than a small fraction of its annual dietary intake. Assuming that the same results would be valid for the central Beaufort Sea where Northstar is located, NMFS concludes that bowhead whales will feed opportunistically during the fall migration but that no areas of concentrated feeding occur on a multi-year basis within or near the planned area of operations.

Marine Mammal Impact Concerns

Comment 4: The Trustees state that NMFS must evaluate the impacts of the ''mystery'' noise source associated with Northstar production.

Response: The unknown noise source that occurred only during 2003 was evaluated in Richardson and Williams [eds] (2004). That document is part of NMFS' Administrative Record on this action. Additional information can be found in RTC 8 in the proposed rule (70 FR 42520, July 25, 2005).

Comment 5: The Trustees state that MMS plans to renew its permitting of the Liberty offshore oil and gas facility. Accordingly, the cumulative effects of Northstar and Liberty facilities during the effective term of the potential regulations must be evaluated.

Response: BP is considering its options which could lead to developing the Liberty prospect in the Beaufort Sea as a satellite supported by either the existing Endicott or Badami operations. Development of Liberty was first proposed in 1998 as a stand-alone drilling and production facility (see MMS, 2003. Final EIS for the Liberty Development and Production Plan). It was put on hold in 2002 pending further review of project design and economics. A decision has not been made to proceed with developing Liberty, but BP is examining the feasibility of designing and permitting Liberty as a satellite field (BP, 2005).

Both the Northstar and Liberty Final EISs analyzed cumulative effects from oil production. These two documents are part of NMFS' Administrative Record on this action.

Comment 6: The Trustees state that, in order for the Secretary to determine that the activity will have a negligible impact on marine mammal species and stocks, the Secretary must consider changes in the regulatory regime governing proposed operations. The Secretary must also use the best scientific information available. In that regard, the Trustees state that NMFS must consider changes to the State of Alaska oil discharge prevention and contingency plan regulations that have eliminated certain requirements and will thus increase the duration and

amount of discharge in the event of an accidental spill.

Response: On December 21, 2001 (66 FR 65923), NMFS published a notice of issuance of an LOA to BP for oil production activities at Northstar. This document contained an evaluation of the potential for an oil spill to occur at Northstar and for that oil spill to affect bowhead whales and other marine mammals. Based on the information contained in the Northstar FEIS (Corps, 1999), NMFS concluded, at that time, that the potential for an oil spill to occur and affect marine mammals was low. As a result, NMFS determined that the findings of negligible impact on marine mammals from the Northstar facility that was made in the final rule (65 FR 34014, May 25, 2000) were appropriate. NMFS also determined that its finding of no unmitigable adverse impact on bowhead availability for subsistence hunting was appropriate. No information has been provided to, or found by, NMFS to indicate that the earlier decision was not correct and needed reevaluation. The fact that the State of Alaska modified its statutes to define oil discharge plans and relevant regulations is not relevant for the determinations needed to be made by NMFS for this action since well drilling at Northstar has been completed and BP has incorporated the best available technology at Northstar to virtually eliminate the potential for a significant oil spill to occur. This finding is supported by BP documenting and reporting activities at Northstar.

Subsistence Concerns

Comment 7: The AEWC notes that the Open Water Season Conflict Avoidance Agreement is entered among the operator, the AEWC, and local Whaling Captains' Associations. The North Slope Borough is not a party.

Response: NMFS has updated this document accordingly.

Monitoring Concerns

Comment 8: The Commission recommends that NMFS consult with the applicant, the MMS, and other industry and government entities, as appropriate, to develop a collaborative long-term Arctic monitoring program.

Response: Under section 101(a)(5)(A) of the MMPA, NMFS must prescribe a monitoring program that the applicant must implement to provide information on marine mammal takings. Swartz and Hofman (1991) note that a monitoring program should also be designed to support (or refute) the finding that the total taking by the activity is not having more than a negligible impact on affected species and stocks of marine mammals, during the period of the rulemaking. This 6–year monitoring program is described in detail in Richardson and Williams [eds] (2004). The results from this study help NMFS ensure that the activity's impacts on marine mammal species or stocks are, in fact, negligible and are not having an unmitigable adverse impact on their availability for subsistence uses. That report has been reviewed by the SAC. Its findings are discussed later in this document.

In addition to monitoring required of BP, it should be recognized that research and monitoring of Beaufort Sea marine mammals are also conducted by government agencies, or through government agency funding. This includes, for example, MMS' aerial bowhead whale surveys, an annual population assessment survey for bowhead whales, a study on contaminant levels in bowhead whale tissue, and a bowhead whale health assessment study. These latter three studies are funded by or through NMFS. Information on these projects has been provided in the past to the Commission by NMFS. Based on this multi-faceted monitoring program, NMFS has determined that the current and proposed monitoring programs for both open-water and wintertime are adequate to identify impacts on marine mammals, both singly from the project and cumulatively throughout the industry.

Comment 9: The Commission is ''concerned about the likely effects of climate change on sea ice in the Arctic and their corresponding effects, by themselves and in conjunction with activities such as the Northstar project, on ringed seals and polar bears and availability to Alaska Natives who depend upon them for subsistence.'' The Commission recommends that the potential effects of climate change be factored, as appropriate and practical, into long-term monitoring and mitigation programs.

Response: NMFS does not believe that the issuance of LOAs to BP for the incidental taking (by harassment) of marine mammals over the next 5 years is the appropriate venue for the study of long-term climate change. NMFS understands that studies on Arctic climate change impacts are being proposed by other federal science agencies.

It should be noted that Northstar and related monitoring includes the collection of data and information on ringed seal and bowhead whale distribution and abundance. Correlation of that information with information on yearly shore-fast ice distribution and thickness provides some information on short-term climate effects.

Comment 10: The AEWC requests NMFS clarify that the Richardson and Williams [eds], 2004 monitoring study on which NMFS relies for its findings is under revision; therefore, NMFS should specify that its findings are provisional pending the results of the reanalysis. While NMFS notes the SAC report in the preamble to the proposed rule, NMFS does not address the SAC's analysis and recommendations. The final rule should recognize the SAC's recommendation for re-analysis and the Open-Water Meeting participants' agreement to those recommendations. Meeting participants also agreed that BP would reduce its survey effort for 2005 so that it could devote resources to the recommended re-analysis.

Response: The SAC reviewed Richardson and Williams [eds] (2004) between March 7 and 9, 2005. That review was released by the NSB in April, 2005 and is part of NMFS' Administrative Record for this action. The SAC's opinion, that the conclusions in the Richardson and Williams [eds] report are generally supported by the data presented, is influenced in large part by the general findings that: (1) the impacts from Northstar have likely been minimal, and (2) the production noise from the island is relatively low. The sound measurement data suggest that noise from the island is relatively low, and it appears that the loudest sources are vessel noise, which is apparently most responsible for the observed effects. Concerns were raised by the SAC mostly in regard to data analysis. BP is currently revising the 2004 monitoring report and will submit its final report shortly.

Comment 11: As the AEWC notes, the SAC report states that the assumption that bowhead call rates are not influenced by industrial sounds is not supported. Changes in calling behavior can be an indicator of disturbance, whether or not displacement occurs, and can provide important information on potential impacts to subsistence hunting. From the Northstar perspective, this point is especially important in the cumulative effects context.

Response: NMFS agrees. The SAC noted that calling behavior within the analysis area was not analyzed. The SAC recommended that calling behavior be analyzed as extensively as possible from the data that has been collected.

Comment 12: The AEWC notes that Northstar could contribute cumulatively to push the bowhead migration offshore. In that regard, the AEWC, based on the SAC's recommendations and

deliberations during recent Open Water (Peer-Review) Meetings, is under the impression that BP intends to evaluate noise and bowhead behavior to the east and west of Northstar. This information is essential for an understanding of the initiation and duration of a response. It is also essential to NMFS and other permitting agencies when considering the timing and location of future proposed activities in the vicinity of Northstar (as pointed out by the Corps in the Northstar EIS). The AEWC noted that NMFS should note the need to analyze Northstar data for impacts on bowhead calling behavior.

Response: The SAC believes it is essential to continue monitoring noise 450 m north of Northstar each year during the autumn bowhead migration, using one or more DASARs (Directional Autonomous Seafloor Acoustic Recorder) or other device, providing data in near real-time, if possible. Regardless of the outcome of the reanalysis of previously collected data at Northstar, the SAC recommends that a full acoustical array data collection and analysis (as in 2001 - 2004) should be conducted once every 4 years, with limited monitoring in interim years. This full array may or may not provide the same spatio-temporal coverage as previous years but should be of comparable scope, if not greater. Alternative DASAR arrays might extend further north or cover more east-west range. This recommendation was accepted by the participants at the Beaufort Sea Open Water Peer Review Meeting that was held in Anchorage, AK on May 10–12, 2005.

Comment 13: The AEWC objects to NMFS statements that, because the fall subsistence hunts have been successful in recent years, this demonstrates that there is no impact to the bowhead subsistence hunt from operations at Northstar. The AEWC notes that there have been many years in which the fall bowhead whale migration has been subject to disturbance, in some cases, substantial. The whaling captains have still succeeded in taking whales because they have looked for ways to hunt in spite of adverse impacts, by using larger boats and GPS locators. This increases risks and dollar cost for the subsistence hunt.

Response: When promulgating incidental take regulations and issuing LOAs for the Northstar oil production facility, NMFS must determine that the activity is not having an unmitigable adverse impact on subsistence uses of marine mammals. Unmitigable adverse impact means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met (50 CFR 216.103). For the Northstar facility, a Conflict Avoidance Agreement (CAA) has been negotiated between BP, the AEWC, and the local Whaling Captains' Associations in past years. A signed CAA indicates to NMFS that, while there might be impacts to the subsistence hunt by Northstar, they do not rise to the level of having unmitigable adverse impacts.

Comment 14: The AEWC noted that in the late summer and fall of 2003, tug and barge operations hauled equipment from Camp Lonely to West Dock for two months prior to the bowhead subsistence hunt at Barrow and then during the hunt into October. Bowheads harvested in early September near Cross Island by Nuiqsut hunters were taken relatively near the island within normal hunting distances. However, whales harvested one month later by Barrow hunters--west of both Northstar and the tug and barge operations--appeared to be farther offshore than normal. Based on the fall 2003 observations, it appears that the migration could have been deflected somewhere west of Cross Island and could have remained farther offshore than normal past Pt. Barrow. As a result, NMFS must take account of the possibility that seemingly ''small'' disturbances, when spread across the bowhead migration route, can lead to a deflection or other disturbance of the bowhead migration.

Response: This information is more relevant to the 2005 tug-and-barge IHA (see 70 FR 47809, August 15, 2005). This activity was not associated with the Northstar facility. For this same activity in 2005, the AEWC signed a CAA with the activity sponsors that indicated this barging would not have an unmitigable adverse impact on the availability of bowheads for subsistence hunting. Implementation of a mitigation measure ceasing barging operations by August 15th and not resuming until later in the fall was determined by NMFS to be an appropriate mitigation measure. In regard to the 2003 barging activity, NMFS did not issue an IHA for this activity and, therefore, does not have any record of timing of the transits and potential impacts that could be assessed by marine mammal monitors. Whether this activity impacted the fall Barrow hunt or whether other factors (such as storms) played a role is unclear. Without empirical data on distribution of whales during the bowhead hunt, and locations of the harvest, cause-and-effect relationships remain speculative.

Mitigation Concerns

Comment 15: The AEWC recommends that NMFS clarify that the 180–dB monitoring will be required at any time of the year during which activities emitting these sound levels are proposed.

Response: If an activity at Northstar produces sound pressure levels (SPLs) at a level such that SPLs equal to or greater than 180 dB re 1 microPa (rms) extend beyond the island, BP is required to monitor the potential impacts from that activity during any time of the year. However, during the winter, when no cetaceans are in the vicinity of Northstar, monitoring would take place for any activity with an SPL extending beyond the island perimeter at a level of 190 dB or above, the Level A criterion for pinnipeds.

Comment 16: The AEWC notes that even with a safety zone shut-down corresponding to 180 dB, bowhead whales will not be available to subsistence hunters at distances quite far beyond that noise level. Therefore, reference to mitigation of impacts on subsistence by monitoring a safety zone for preventing Level A harassment is inappropriate and misleading.

Response: NMFS agrees. BP designed, and NMFS approved, Northstar mitigation measures to: (1) prevent, or mitigate to the greatest extend practicable, hearing impairment or hearing injury to marine mammals; and (2) to ensure that Northstar activities are not having an unmitigable adverse impact on the subsistence harvests of marine mammals. The first goal is accomplished through monitoring safety zones to prevent injury, while the second is implemented through a prohibition on conducting, to the maximum extent practicable, activities that will result in SPLs exceeding 180 dB beyond the confines of the Northstar facility.

Description of Marine Mammals Affected by the Activity

The following six species of seals and cetaceans can be expected to occur in the region of proposed activity and be affected by the Northstar facility: ringed, spotted and bearded seals, and bowhead, gray and beluga whales. General information on these species can be found in the NMFS Stock Assessment Report. The Alaska document is available at: *http://*

www.nmfs.noaa.gov/pr/readingrm/MMSARS/sar2003akfinal.pdf More detailed information on these six species can be found in BP's application which is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Small__Take/smalltake__info.htm#applications.*

In addition to these six species for which an incidental take authorization is sought, other species that may occur rarely in the Alaskan Beaufort Sea include the harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), narwhal (*Monodon monoceros*), and hooded seal (*Cystophora cristata*). Because of the rarity of these species in the Beaufort Sea, BP and NMFS do not expect individuals of these species to be exposed to, or affected by, any activities associated with the planned Northstar activities. As a result, BP has not requested these species be included under its incidental take authorization. Two other marine mammal species found in this area, the Pacific walrus (*Odobenus rosmarus*) and polar bear (*Ursus maritimus*), are managed by the U.S. Fish and Wildlife Service (USFWS). Potential incidental takes of those two species will be the subject of a separate MMPA Incidental Take application by BP from the USFWS.

Potential Effects on Marine Mammals

The potential impacts of the offshore oil development at Northstar on marine mammals involve both acoustic and non-acoustic effects. Potential non-acoustic effects could result from the physical presence of personnel, structures and equipment. The visual presence of facilities, support vessels, and personnel, and the unlikely occurrence of an oil spill, are potential sources of non-acoustic effects. There is a small chance that a seal pup might be injured or killed by on-ice construction or transportation activities.

Acoustic effects involve sounds produced by activities such as power generation and oil production on Northstar Island, heavy equipment operations on ice, impact hammering, drilling, and camp operations. Some of these sounds were more prevalent during the construction and drilling periods, and sound levels emanating from Northstar are expected to be lower during the ongoing production period. During average ambient conditions, some Northstar-related activities are expected to be audible to marine mammals at distances up to 10 km (5.4 nm) away. However, because of the poor transmission of airborne sounds from the Northstar facility into the water, and their low effective source levels, sounds from production operations are not expected to disturb marine mammals at distances beyond a few kilometers from the Northstar development.

Responses by pinnipeds to noise are highly variable. Responses observed to date by ringed seals during the ice-covered season are limited to short-term behavioral changes in close proximity to activities at Northstar. During the open-water season responses by ringed seals are expected to be even less than during the ice-covered season. A major oil spill is unlikely (please see RTCs 2 and 3 in 66 FR 65923 (December 21, 2001)) for a discussion on potential for an oil spill to affect marine mammals in the Beaufort Sea), but the impact of an oil spill on seals could be lethal to some heavily oiled pups or adults. In the unlikely event of a major spill, the overall impacts to seal populations would be minimal due to the small fraction of those that would be exposed to recently spilled oil and seriously affected.

Responses to Northstar activities by migrating and feeding bowhead whales and beluga whales will be short-term and limited in scope due to the typically small proportion of whales that will migrate near Northstar and the relatively low levels of underwater sounds propagating seaward from the island at most times. Limited deflection effects may occur when vessels are operating for prolonged periods near Northstar. An oil spill is unlikely and it is even less likely to disperse into the main migration corridor for either whale species. The effects of oiling on bowhead and beluga whales are unknown, but could include fouling of baleen and irritation of the eyes, skin, and respiratory tract (if heavily oiled).

Impacts to marine mammal food resources or habitat are not expected from any of the continued drilling or operational activities at Northstar.

Potential Impacts on Subsistence Use of Marine Mammals

Inupiat hunters emphasize that all marine mammals are sensitive to noise, and, therefore, they make as little extraneous noise as possible when hunting. Bowhead whales often show avoidance or other behavioral reactions to strong underwater noise from industrial activities, but often tolerate the weaker noise received when the same activities are occurring farther away. Various studies have provided information about these sound levels and distances (Richardson and Malme, 1993; Richardson *et al.*, 1995a,b; Miller *et al.*, 1999). However, scientific studies done to date have limitations, as discussed in part by Moore and Clarke (1992) and in MMS (1997). Inupiat whalers believe that some migrating bowheads are diverted by noises at greater distances than have been demonstrated by scientific studies (e.g., Rexford, 1996; MMS, 1997). The whalers have also mentioned that bowheads sometimes seem more skittish and more difficult to approach when industrial activities are underway in the area. There is also concern about the persistence of any deflection of the bowhead migration, and the possibility that sustained deflection might influence subsistence hunting success farther ''downstream'' during the fall migration.

Underwater sounds associated with drilling and production operations have lower source levels than do the seismic pulses and drillship sounds that have been the main concern of the Inupiat hunters. Sounds from vessels supporting activities at Northstar will attenuate below ambient noise levels at smaller distances than do seismic or drillship sounds. Thus, reaction/deflection distances for bowhead whales approaching Northstar are expected to be considerably shorter than those for whales approaching seismic vessels or drillships (BP, 1999).

Recently, there has been concern among Inupiat hunters that barges and other vessels operating within or near the bowhead migration/feeding corridor may deflect whales for an extended period (J.C. George, NSB-DWM, pers. comm to Michael Williams). It has been suggested that, if the headings of migrating bowheads are altered through avoidance of vessels, the whales may subsequently maintain the ''affected'' heading well past the direct zone of influence of the vessel. This might result in progressively increasing deflection as the whale progresses west. However, crew boats and barges supporting Northstar remain well inshore of the main migration corridor. As a result, BP believes, and NMFS agrees, that this type of effect is unlikely to occur in response to these types of Northstar-related vessel traffic.

Potential effects on subsistence could result from direct actions of oil development upon the biological resources or from associated changes in human behavior. For example, the perception that marine mammals might be contaminated or ''tainted'' by an oil spill could affect subsistence patterns whether or not many mammals are actually contaminated. The BP application discusses both aspects in greater detail.

A CAA/Plan of Cooperation (CAA/Plan) has been negotiated between BP, the AEWC, and the local Whaling Captains' Associations in past years,

and discussions regarding future agreements are on-going. A new Plan will address concerns relating to the subsistence harvest of marine mammals in the region surrounding Northstar.

Mitigation

Mitigation by BP includes avoidance of seal lairs by 100 m (328 ft) if new activities occur on the floating sea ice after 20 March. In addition, BP will mitigate potential acoustic effects that might occur due to exposure of whales or seals to strong pulsed sounds. If BP needs to conduct an activity capable of producing underwater sound with levels ≥180 or ≥190 dB re 1 μPa (rms) at locations where whales or seals respectively could be exposed, BP will monitor safety zones corresponding to those levels. Activities producing underwater sound levels ≥180 or ≥190 dB re 1 μPa (rms) would be temporarily shut down if whales and seals, respectively, occur within the relevant radii. The purposes of this mitigation measure is to minimize potentially harmful impacts to marine mammals and their habitat. In addition, BP will prohibit, to the maximum extent practicable, activities that will result in SPLs exceeding 180 dB beyond the confines of the Northstar facility during the bowhead subsistence hunt, in order to ensure the availability of marine mammals for subsistence purposes.

Monitoring

The monitoring required of BP includes some research components to be implemented annually and others to be implemented on a contingency basis. Basking and swimming ringed seals will be counted annually by Northstar personnel in a systematic fashion to document the long-term stability of ringed seal abundance and habitat use near Northstar. BP will monitor the bowhead migration in 2005 and subsequent years using two DASARs to record near-island sounds and two to record whale calls. If BP needs to conduct an activity capable of producing underwater sound with levels ≥180 or ≥190 dB re 1 microPa (rms) at locations where whales or seals could be exposed, BP will monitor safety zones defined by those levels. The monitoring would be used in estimating the numbers of marine mammals that may potentially be disturbed (i.e., taken by Level B harassment), incidental to operations of Northstar.

SAC Review

In accordance with agreements made at NMFS' 2004 scientific peer-review meeting in Anchorage AK, that the information and data analysis contained in Richardson and Williams [eds] (2004) should undergo a more in-depth scientific analysis and review, in March 2005, the SAC completed its review of this multi-year report on monitoring conducted at Northstar. They also reviewed this document in the context of the current BP application and monitoring plan. That review was released by the NSB in April, 2005 and was the subject of additional discussion at NMFS' 2005 peer-review meeting. It is also part of NMFS' Administrative Record for this action. The SAC concluded that while the effect of Northstar on the distribution of bowheads has not yet been determined, the overall monitoring was carried out well and the analysis approach was reasonable.

However, the SAC was unable to conclude that the effect of Northstar on the distribution of whales has been determined, to the extent that it could be, until some additional analyses have been carried out, using the data previously collected. There are no results that describe how the displacement in the analysis area may affect distribution outside the analysis area. If the analysis is improved so as to provide reasonable determination of displacement within the analysis area, the SAC concludes reasonable predictions of future displacement can be made in the analysis area given measurements of future sound propagation remain at or below current levels.

The SAC's opinion, that the conclusions in the cited BP monitoring report are generally supported by the data presented, is influenced in large part by the general findings that: (1) the impacts from Northstar have likely been minimal, and (2) the production noise from the island is relatively low. The sound measurement data suggest that noise from the island is relatively low, and it appears that the loudest sources are vessel noise, which is apparently most responsible for the observed effects. The SAC's concerns were mostly in regard to the data analysis, such as use of an Industrial Sound Index, that the quantile regression analysis be rerun using different predictors; that auto-correlation of bowhead call distances was not accounted for in fitting the quantile regression. The SAC also noted that aircraft noise was not adequately analyzed.

The SAC noted that a key supposition of the Northstar study was that there was a dose-response relationship underlying the whales' response to the noise from Northstar. Because of the very low levels of steady production noise from Northstar during the study period, this supposition was not demonstrated. Effects on call behavior, a key focus of the study objectives, were not examined in any depth. The statistical analysis approach was generally well conceived, but some revisions and extensions are strongly suggested. It should also be determined if the statistical approach used is appropriate, if in fact, no dose-response relationship can be established.

On future monitoring, the SAC believes it is essential to continue monitoring noise 450 m (1476.4 ft) north of Northstar each year during the autumn bowhead migration, using one or more DASARs or other device, providing data in near real-time, if possible. Regardless of the outcome of the data reanalysis, the SAC recommends that a full acoustical array data collection and analysis (as in 2001 - 2004) should be conducted once every 4 years, with limited monitoring in interim years. This full array may or may not provide the same spatio-temporal coverage as previous years but should be of comparable scope, if not greater. (Alternative arrays might extend further north or cover more east-west range).

Finally, the SAC recommended placement of one nondirectional hydrophone (plus one or more redundant placements) at a position to be chosen as follows: (a) the location should be one used in 2001–4, and (b) the location should be the one that maximizes the proportion of the migration recorded. This is not a high scientific priority, but may provide useful information.

In addition to this regular schedule, the SAC recommends a full field study and subsequent analysis should be carried out immediately if analysis of the most recent available data indicate it to be necessary.

BP is currently revising the 2004 monitoring report and will submit its final report shortly.

Peer-Review Meeting

On May 10, 2005, the Beaufort Sea Open Water Peer-Review Meeting was held in Anchorage, AK to discuss several activities proposed for the Beaufort Sea during 2005. One of the actions was a review of the monitoring plan for the upcoming 5–year period. After presentations by BP and the SAC, the workshop participants agreed that BP should undertake a monitoring program as described in the previous section.

Reporting

BP will submit annual monitoring reports, with the first report to cover the activities from January, 2006 through October 2006 (i.e., the end of the bowhead migration period), and subsequent reports to cover activities from November of one year through October of the next year. The 2006 report would be due on March 31, 2007. For subsequent years, the annual report (to cover monitoring during a 12–month November-October period) would be submitted on 31 March of the following year.

As detailed in the applicable LOA, an annual report will provide summaries of BP's Northstar activities. These summaries will include the following: dates and locations of ice-road construction, on-ice activities, vessel/hovercraft operations, oil spills, emergency training, and major repair or maintenance activities thought to alter the variability or composition of sounds in a way that might have detectable effects on ringed seals or bowhead whales. The annual report will also provide details of ringed seal and bowhead whale monitoring, the monitoring of Northstar sound via either the nearshore DASAR (or the DASAR array when that larger-scale monitoring program takes place), estimates of the numbers of marine mammals exposed to project activities, descriptions of any observed reactions, and documentation concerning any apparent effects on accessibility of marine mammals to subsistence hunters.

BP will also submit a single comprehensive report on the monitoring results from 2006 to mid–2010 no later than 240 days prior to expiration of the renewed regulations, i.e., by September 2010.

If specific mitigation is required for activities on the sea ice initiated after 20 March (requiring searches with dogs for lairs), or during the operation of strong sound sources (requiring visual observations and shut-down), then a preliminary summary of the activity, method of monitoring, and preliminary results will be submitted within 90 days after the cessation of that activity. The complete description of methods, results and discussion will be submitted as part of the annual report.

Any observations concerning possible injuries, mortality, or an unusual marine mammal mortality event will be transmitted to NMFS within 48 hours.

Determinations

NMFS has determined that the impact of operation of the Northstar facility in the U.S. Beaufort Sea will result in no more than a temporary modification in behavior by certain species of cetaceans and pinnipeds. During the ice-covered season, pinnipeds close to the island may be subject to incidental harassment due to the localized displacement from construction of ice roads, from transportation activities on those roads, and from oil production-related activities at Northstar. As cetaceans will not be in the area during the ice-covered season, they will not be affected.

During the open-water season, the principal operations-related noise activities will be impact hammering, helicopter traffic, vessel traffic, and other general production activity on Seal Island. Sounds from production activities on the island are not expected to be detectable more than about 5–10 km (3.1–6.2 mi) offshore of the island. Helicopter traffic will be limited to nearshore areas between the mainland and the island and is unlikely to approach or disturb whales. Barge traffic will be located mainly inshore of the whales and will involve vessels moving slowly, in a straight line, and at constant speed. Little disturbance or displacement of whales by vessel traffic is expected. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have no more than a negligible impact on the animals.

The number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of operations. However, because the activity is in shallow waters inshore of the main migration/feeding corridor for bowhead whales and far inshore of the main migration corridor for belugas, the number of potential harassment takings of these species and stocks is estimated to be small. The results of intensive studies and analyses to date (Williams et al., 2004) suggest that the biological effects of Northstar on ringed seals are minor (resulting from short distance displacement of breathing holes and haul-out sites), limited to the area of physical ice disturbance around the island and small in number. In addition, no take by injury or death of any marine mammal is anticipated, and the potential for temporary (or permanent) hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, areas of concentrated mating or feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations.

Because most of the bowhead whales are east of the Northstar area in the Canadian Beaufort Sea until late August/early September, activities at Northstar are not expected to impact subsistence hunting of bowhead whales prior to that date. Mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs are determined annually during consultations between BP and the bowhead subsistence users. When appropriate, these mitigation measures are incorporated into the annual LOA issued to BP by NMFS. Mitigation measures required by NMFS include a prohibition on new drilling into oil-bearing strata during either open water or spring-time broken ice conditions and limitations on aircraft flights during the bowhead migration. As a result of these mitigation measures and conclusion of an annual CAA, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses of bowhead whales.

Also, while production at Northstar has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta, and (3) the zone of influence from Northstar on seals is fairly small, NMFS believes that Northstar oil production will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

NMFS has determined that the potential for an offshore oil spill occurring is low (less than 10 percent over 20–30 years (Corps, 1999)) and the potential for that oil intercepting whales or seals is even lower (about 1.2 percent (Corps, 1999)). In addition, there will be an oil spill response program in effect that will be as effective as possible in Arctic waters. Accordingly, and because of the seasonality of bowheads, NMFS has determined that the taking of marine mammals incidental to operations at the Northstar oil production facility will have no more than a negligible impact on them. Also, NMFS has determined that there will not be an unmitigable adverse impact on the availability of marine mammals for subsistence uses.

ESA

On March 4, 1999, NMFS concluded consultation with the Corps on permitting the construction and operation at the Northstar site. The finding of that consultation was that construction and operation at Northstar is not likely to jeopardize the continued existence of the bowhead whale stock. No critical habitat has been designated

for this species; therefore, none will be affected. NMFS has determined that this rulemaking action will not have effects beyond what was analyzed in 1999 in the Biological Opinion.

NEPA

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency noted the availability for public review and comment of a Final EIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until March 8, 1999. Based upon a review of the Final EIS, the comments received on the Draft EIS and Final EIS, and the comments received during the previous rulemaking, on May 18, 2000, NMFS adopted the Corps Final EIS and determined that it is not necessary to prepare supplemental NEPA documentation (see 65 FR 34014, May 25, 2000). As no new scientific information has been obtained since publication of that Final EIS that would change the analyses in that Final EIS, additional NEPA analyses are not warranted.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage, that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would have no effect, directly or indirectly, on small businesses. The factual basis for this certification is found in the proposed rule. No comments were received on that certification or the economic impacts of this rule. As a result, no final regulatory flexibility analysis was prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151, and include applications for LOAs, and reports.

The reporting burden for the approved collections-of-information is estimated to be approximately 80 hours for the annual applications for an LOA, a total of 80 hours each for the winter monitoring program reports and a total of 120–360 hours for the interim and final annual open-water reports (increasing complexity in the analysis of multi-year monitoring programs in the latter years of that program requires additional time to complete). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 1, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart R is added to part 216 to read as follows:

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

Sec.

216.200 Specified activity and specified geographical region.
216.201 Effective dates.
216.202 Permissible methods of taking.
216.203 Prohibitions.
216.204 Mitigation.
216.205 Measures to ensure availability of species for subsistence uses.
216.206 Requirements for monitoring and reporting.
216.207 Applications for Letters of Authorization.
216.208 Letters of Authorization.
216.209 Renewal of Letters of Authorization.
216.210 Modifications to Letters of Authorization.

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

§ 216.200 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in oil and gas development activities in areas within state and/or Federal waters in the U.S. Beaufort Sea specified in paragraph (a) of this section. The authorized activities as specified in a Letter of Authorization issued under §§ 216.106 and 216.208 include, but may not be limited to, site construction, including ice road and pipeline construction, vessel and helicopter activity; and oil production activities, including ice road construction, and vessel and helicopter activity, but excluding seismic operations.

(a)(1) Northstar Oil and Gas Development; and

(2) [Reserved]

(b) The incidental take by Level A harassment, Level B harassment or mortality of marine mammals under the activity identified in this section is limited to the following species: bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), beluga whale (*Delphinapterus leucas*), ringed seal (*Phoca hispida*), spotted seal (*Phoca largha*) and bearded seal (*Erignathus barbatus*).

§ 216.201 Effective dates.

Regulations in this subpart are effective from April 6, 2006 through April 6, 2011.

§ 216.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.208, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment and mortality within the area described in § 216.200(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings contemplated in § 216.200 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.208, no person in connection with the activities described in § 216.200 shall:

(a) Take any marine mammal not specified in § 216.200(b);

(b) Take any marine mammal specified in § 216.200(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in § 216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

§ 216.204 Mitigation.

The activity identified in § 216.200(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.200, the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to § 216.207, or a renewal of a Letter of Authorization pursuant to § 216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;

(b) A description of what measures the applicant has taken and/or will take to ensure that oil development activities will not interfere with subsistence whaling or sealing;

(c) What plans the applicant has to continue to meet with the affected communities to notify the communities of any changes in operation.

§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.208 for activities described in § 216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating new activities potentially involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to § 216.106 and § 216.208.

(c) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

(d) Unless specified otherwise in the Letter of Authorization, the Holder of that Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than March 31 of the year following the conclusion of the previous open water monitoring season. This report must contain all information required by the Letter of Authorization.

(e) A final annual comprehensive report must be submitted within the time period specified in the governing Letter of Authorization.

(f) A final comprehensive report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if renewal of the regulations will not be requested.

§ 216.207 Applications for Letters of Authorization.

(a) To incidentally take bowhead whales and other marine mammals pursuant to these regulations, the U.S. citizen (see definition at § 216.103) conducting the activity identified in § 216.200 must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.106 and 216.208, or a renewal under § 216.209.

(b) The application for an initial Letter of Authorization must be submitted to the National Marine Fisheries Service at least 180 days before the activity is scheduled to begin.

(c) Applications for initial Letters of Authorization must include all information items identified in § 216.104(a).

(d) NMFS will review an application for an initial Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, will publish a notice of receipt of a request for incidental taking and a proposed amendment to § 216.200(a). In conjunction with amending § 216.200(a), the National Marine Fisheries Service will provide for public comment on the application for an initial Letter of Authorization.

(e) Upon receipt of a complete application for an initial Letter of Authorization, and at its discretion, the National Marine Fisheries Service may submit the monitoring plan to members of a peer review panel for review and/or schedule a workshop to review the plan. Unless specified in the Letter of Authorization, the applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an initial Letter of Authorization.

§ 216.208 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.209.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including any requirements for the independent peer-review of proposed monitoring plans.

(c) Issuance and renewal of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.209 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.208 for the activity identified in § 216.200 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.207 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.205, and the Letter of Authorization issued under § 216.208, which have been reviewed and accepted by the National Marine Fisheries Service, and of the Plan of Cooperation required under § 216.205; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.204 and the Letter of Authorization issued under §§ 216.106 and 216.208, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.208 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a minimum of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data that indicates that the determinations made in this document are in need of reconsideration,

(2) The Plan of Cooperation, and

(3) The proposed monitoring plan.

(c) A notice of issuance or denial of a Renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.210 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by the National Marine Fisheries Service, issued pursuant to §§ 216.106 and 216.208 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.209, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.200(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.208 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. 06–2136 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 030106A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2006 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 2, 2006, until 1200 hrs, A.l.t., September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allocation of the 2006 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA is 10,876 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA, to be published in the **Federal Register** in early March of 2006.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,776 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for

public comment because the most recent, relevant data only became available as of February 28, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 1, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–2135 Filed 3–2–06; 2:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 44
Tuesday, March 7, 2006

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 390

[Docket No. 04–006P]
[FDMS Docket Number FSIS–2005–0028]

RIN 0583–AD10

Availability of Lists of Retail Consignees During Meat or Poultry Product Recalls

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the federal meat and poultry products inspection regulations to provide that the Agency will make available to the public lists of the retail consignees of meat and poultry products that have been voluntarily recalled by a federally inspected meat or poultry products establishment if product has been distributed to the retail level. FSIS is proposing to routinely post these retail consignee lists on its Web site as they are developed by the Agency during its recall verification activities.

FSIS is proposing this action because it believes that the efficiency of recalls will be improved if there is more information available as to where products that have been recalled were sold. By providing consumers more information about the locations where recalled products have been sold, FSIS believes that consumers will be more likely to identify and return such products to those locations or to dispose of them. This action will apply only to meat and poultry products.

DATES: Comments must be received on or before May 8, 2006. FSIS intends to hold a public meeting on this issue during the comment period.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, and then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2005–0028 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- *Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- *Electronic mail:* *fsis.regulationscomments@fsis.usda.gov.*

All submissions received by mail and electronic mail must include the Agency name and docket number 04–006P. All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Lynn E. Dickey, Director, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700; Telephone (202) 720–2709, Fax (202) 690–0486.

SUPPLEMENTARY INFORMATION: FSIS is responsible for ensuring that meat and poultry products are safe, wholesome, and accurately labeled. FSIS enforces the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These two statutes require Federal inspection and provide for Federal regulation of meat and poultry products prepared for distribution in commerce for use as human food. When there is reason to believe that meat or poultry products in commerce are adulterated or misbranded, FSIS will request that the firm that introduced the products into commerce recall them. If the establishment does not agree to recall the products, FSIS has the authority to detain and seek seizure of the products.

If the establishment does agree to recall the products, recall information is widely disseminated by FSIS. For every recall, except some Class III recalls, FSIS distributes a press release. FSIS send recall information to wire services and media services in the areas where the product was distributed. For recalls where no press release is issued, FSIS distributes a Recall Notification Report (RNR) and posts this on its Web site.

Through press releases and RNRs, FSIS provides the public with information about meat and poultry recalls. This information includes: A description of the food being recalled, any identifying codes, the reason for the recall, the name of the producing establishment, the level of product distribution (e.g., wholesale; retail) to which the recall is to extend, the availability of product at the retail level, the recall classification, and the appropriate contact persons for FSIS and the recalling company. FSIS also lists those States to which recalled product was shipped if fewer than 13 States were involved in the recall. If the recall extends to more than 13 States, it is considered to be a nationwide recall. In addition, FSIS sends recall information to several media and constituent list-servers.

During the recall process, if products are recalled to the retail level, FSIS requests that the firm conducting the recall provide FSIS with a list of the consignees to whom the recalled meat or poultry products were distributed. FSIS uses this information in verifying the recall to ensure that the consignees have been notified of the recall and are removing the products from the market and returning them to the recalling firm. FSIS also obtains lists from the consignees of all entities to which they distributed the product and contacts those entities to ensure that they were notified. The Agency then obtains those consignees' distribution lists and thereby traces the product forward to the retail level.

FSIS has generally treated distribution lists obtained during recalls as confidential business information, exempt from release under the Freedom of Information Act (FOIA). In 2002, however, FSIS promulgated regulations defining the circumstances and criteria under which it would share product distribution information and customer lists with States and other Federal agencies (67 FR 20009, April 24, 2002). FSIS will disclose this information to States and other Federal government agencies to enable them to verify the removal of the recalled products from commerce, provided that the State or Federal agency has given to FSIS: (1) A written statement establishing its authority to protect confidential distribution lists from public disclosure, and (2) a written commitment not to disclose any information provided to it by FSIS without the written permission of the submitter of the information or written confirmation by FSIS that the information no longer has confidential status (9 CFR 390.9). A disclosure of product distribution information or customer lists to States and other Federal agencies who have this authority and have made such a commitment is not a disclosure to the public and does not waive any FOIA exemption protection (9 CFR 390.9(c)).

Consumer groups and some State officials have advocated the public release of information on where recalled meat and poultry products have been shipped or distributed. These State officials have requested that this information be provided to them without the limitations imposed by FSIS' regulations (9 CFR 390.9(a)(1)), believing that they would be better able to protect the public health. Similarly, some consumer groups have asserted that the public can use this information to identify more easily and effectively the product being recalled. These State officials and consumer groups believe that making the retail distribution information readily available will materially improve the effectiveness of recalls.

While the current process is effective, FSIS believes that product identification can be improved. While FSIS includes in its press release the production code of the product recalled, and will in many cases post a picture of the recalled product's label, it is often the case that more product and often different product is returned than is actually recalled. Therefore, FSIS believes that this proposal, if adopted, would improve the efficiency of the recall process and address consumer groups and State officials' concerns.

FSIS has concluded that it has authority to make available lists the Agency has compiled during recalls of the retail consignees of meat and poultry products that have been recalled, and that it would be appropriate to do so to enhance the efficiency of recalls.

FSIS has concluded that making information identifying the retail consignees of recalled products available to the public will improve the efficiency of recalls by helping consumers to identify and focus on the products that are recalled. In addition, making this retail consignee information available will, we believe, help make clear that other, similar products are not being recalled, and that there is no reason to be concerned about such similar products. The Agency's experience with recalls over time has shown that in many recalls, much more product is returned than has actually been recalled. Often products are returned that were not produced by the recalling company or that were produced at different times or locations than the recalled product.

FSIS is proposing to make available to the public on its Web site the lists of the retail consignees of recalled meat or poultry products that the Agency compiles in connection with its recall verification activities. The retail consignee information will generally be lists compiled by FSIS, and not the customer lists of any specific company. The lists will contain only the names and locations of the identified retail consignees of the recalled meat and poultry products. These retail consignee lists will not include the names of intermediate distributors of such products. Examples of intermediate distributors include food service or institutional distributors. FSIS does not believe that making lists of intermediate distributors routinely and generally available during recalls is warranted. The information is of little value to consumers but is often of commercial value to the companies that rely on such intermediate distributors and firms to get their products to the retail level. Accordingly, the Agency will not make such information routinely available in connection with recalls. However, this information will continue to be made available to State agencies that have made a written commitment to FSIS in accordance with 9 CFR 390.9.

In proposing this action, FSIS is seeking the views of all interested parties, including establishments, on this proposal. It is also important to note that FSIS will hold a public meeting on this proposal. The date and location of the meeting will be announced in the **Federal Register**.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 12866

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

FSIS considered several options, including amending its regulations to include local health departments as entities that could receive recall distribution lists or making the lists available only in response to Freedom of Information requests and to State agencies with agreements under 9 CFR 390.9. FSIS, however, chose to propose that the Agency will make available to the public the names of retail consignees of the recalled products that the Agency has compiled as a result of its recall verification activities. This approach will alert individual consumers, State and local authorities, and other Federal agencies of the names of retail stores in which the recalled products may be found in as expeditious a manner as possible. It will also not involve the disclosure of confidential business information because the lists that FSIS will make public will generally be lists that the Agency has compiled, not the customer lists of any specific company, and only information regarding retail outlets will be made public.

This action would not impose a monetary cost on establishments conducting a recall, and the information proposed to be released would not result in any competitive harm to the affected establishments. If consumers use such information and are better able to identify and return recalled meat and poultry products to the stores where they purchased them, the recall process will be more timely and effective. Although the benefits of the proposed action are not quantified, it is reasonable to conclude that they are equal to or exceed the costs of the rule, because costs are expected to be minimal.

Initial Regulatory Flexibility Analysis

The Agency has concluded that the rule will not have a significant economic impact on a substantial

number of small entities. Consequently, an initial regulatory flexibility analysis is not required.

Government Paperwork Elimination Act (GPEA)

FSIS is committed to achieving the goals of the GPEA, which requires that Government agencies, in general, provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. Under this proposed rule, basic information provided to FSIS by official meat and poultry products establishments voluntarily recalling adulterated meat and poultry products may be submitted to the Agency electronically via e-mail or facsimile. Allowing recalling establishments to do this would reduce data collection time, and information processing and handling by the establishments and FSIS.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

List of Subjects in 9 CFR Part 390

Confidential business information, Freedom of information, Government employees.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III, Subchapter D, as follows:

PART 390—FREEDOM OF INFORMATION AND PUBLIC INFORMATION

1. The authority citation for part 390 would be revised to read as follows:

Authority: 5 U.S.C. 301, 552; 21 U.S.C. 451–471, 601–695; 7 CFR 1.3, 2.7.

2. A new § 390.10 would added to read as follows:

§ 390.10 Availability of Lists of Retail Consignees during Meat or Poultry Product Recalls.

(a) The Administrator of the Food Safety and Inspection Service (FSIS), or designee, will publicly disclose the lists of the retail consignees of recalled meat or poultry products that the Agency has compiled to verify the removal of recalled product. These lists will be available on the FSIS Web site.

(b) The lists that will be disclosed will contain only the names of the identified retail consignees of recalled meat and poultry products and their locations.

Done in Washington, DC, March 1, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. 06–2125 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes; DC–9–20 Series Airplanes; DC–9–30 Series Airplanes; DC–9–40 Series Airplanes; and DC–9–50 Series Airplanes

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

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

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain McDonnell Douglas transport category airplanes. The original NPRM would have superseded an existing AD that currently requires, among other things, revision of an existing program of structural inspections. The original NPRM proposed to require implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. The original NPRM resulted from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. This new action revises the original NPRM by removing certain service information as acceptable methods of compliance. We are proposing this supplemental NPRM to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: We must receive comments on this supplemental NPRM by April 3, 2006.

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

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

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

• Fax: (202) 493–2251.

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility offices 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 **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain McDonnell Douglas transport category airplanes. The original NPRM proposed to supersede AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996), which applies to all McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (military) series airplanes. (Since the issuance of that AD, the FAA has 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.) The original NPRM was published in the **Federal Register** on July 8, 2005 (70 FR 39435). The original NPRM proposed to retain the requirements of AD 96–13–03. The original NPRM also proposed to continue to require revision of the FAA-approved maintenance program. The original NPRM also proposed to require implementation of a structural inspection program of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of airplanes as they approach the manufacturer's original fatigue design life goal. The original NPRM resulted from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. That condition, if not corrected, could result in fatigue cracking that could compromise the structural integrity of these airplanes.

Comments

We have considered the following comments on the original NPRM.

Comments That Resulted in a Change to the Original NPRM

Request To Remove Paragraph (j) of the Original NPRM

One commenter, the manufacturer, points out that the provisions of paragraph (j) of the original NPRM would allow for the use of older outdated versions of Section 2 of Volume II of Boeing Report No. L26–008, ''DC–9 All Series, Supplemental Inspection Document (SID),'' to satisfy future requirements of the original NPRM. The commenter advises that only the November 2004 revision of Volume II should be allowed for compliance with the proposed new requirements, except for future alternative methods of compliance (AMOCs). Therefore, the commenter requests that paragraph (j) of the original NPRM be removed.

We agree to remove paragraph (j) of the original NPRM for the reason the commenter specified, and we have identified the paragraphs of the supplemental NPRM accordingly.

Request To Revise Certain AMOC Language

The same commenter also requests that paragraph (r) of the original NPRM be revised to extend the time during which certain AMOCs would be acceptable for compliance with the actions required by paragraph (f) of the original NPRM. (Paragraph (f) of the original NPRM is part of the restatement of AD 96–13–03.) The commenter points out that the restatement of the requirements of paragraph (f) of the original NPRM addresses only those revisions of the DC–9 SID that are listed in AD 96–13–03. The commenter concludes that, since the new requirements of paragraph (h) of the original NPRM are required within 12 months of the effective date, any operator using an AMOC to AD 96–13–03 would potentially be out of compliance during the required compliance period of paragraph (h) of the original NPRM.

We agree that paragraph (r) of the original NPRM, now identified as paragraph (p)(4) of the supplemental NPRM, should be revised. We infer that the commenter interprets the requirements of paragraph (h) of the supplemental NPRM to effect the accomplishment of the requirements of paragraph (f) of the supplemental NPRM. This is not the case and in order to clarify the requirements and compliance times of this supplemental NPRM, we have added an explanation in paragraph (f) of the supplemental NPRM specifying that the repetitive inspections required by paragraph (f) of the supplemental NPRM must be repeated until the requirements of paragraph (i) of the supplemental NPRM are accomplished. Consequently, we have revised the language of paragraph (p)(4) of the supplemental NPRM to specify that AMOCs approved previously for alternative inspection procedures and planning requirements of AD 96–13–03 are acceptable for compliance with the actions required by

paragraph (f) of the supplemental NPRM until the requirements, at the times specified in paragraph (i) of the supplemental NPRM, are accomplished.

Request To Clarify Paragraph (m) of the Original NPRM

This same commenter states that paragraph (m) of the original NPRM (that paragraph discusses corrective actions if required) is not clear as to whether or not Authorized Representatives (ARs) may approve alternative methods of compliance (AMOCs).

We agree that paragraph (m) of the original NPRM (identified as paragraph (l) of the supplemental NPRM) should be revised. Since the issuance of the original NPRM, we have determined that the description of the approval of corrective actions such as those specified in paragraph (l) of the supplemental NPRM can be simplified by referring to the ''Alternative Methods of Compliance (AMOC),'' paragraph (p) of this supplemental NPRM. In addition, our policy is that all future repairs to an airplane must meet damage tolerance requirements of 14 CFR 25.571, amendment 45. The purpose of this policy is to detect and repair fatigue cracks that may occur in a repair before they become another unsafe condition. Therefore, we have also revised the paragraph addressing AMOCs, paragraph (p) of this supplemental NPRM, to include that requirement.

Comments That Did Not Result in a Change to the Original NPRM

Request To Add a New Principal Structural Element (PSE)

One commenter states that the latest revision (November 2002) of the DC–9 SID, Volume I, created a new PSE 53.09.059. The commenter states that the new PSE is not included in the latest revision (November 2004) of Volume II of the SID, and that operators will not be able to complete inspections of the PSE 53.09.059 area without proper definition of that PSE in Volume II. The commenter requests that the ''oversight'' be corrected with a revision to Volume II of the DC–9 SID, and that the latest revision be specified in the final rule.

We do not agree. We have discussed this issue with the manufacturer, and it has advised us that the DC–9 SID, Volume I, page 1.11, cross-references PSE 53.09.059 to non-destructive inspection (NDI) procedure 53–10–06, with a notation specified on the bottom of the page. The PSE inspection threshold for PSE 53.09.059 specified on page 1.11 states that only sequence 2 of the NDI procedure applies to PSE 53.09.059. Volume 1, Section 4, page 4.10, of the DC–9 SID, also refers to Volume II, procedure 53–10–06. We received no other requests from operators concerning this issue, and the manufacturer is confident that the previous references are sufficient to allow operators to satisfy the SID requirements for this PSE. No change has been made to the supplemental NPRM in this regard.

Request To Consider ''Advancing Thresholds''

One commenter requests the original NPRM be revised to ''advance the thresholds'' prior to the implementation of the final rule (the 100% inspection program) if supported by data collected from the SID sampling program. The commenter states that this would minimize the impact to operators that have inspected any PSE shortly after $\frac{1}{2}N_{th}$, only to find that after that inspection the N_{th} is increased. The commenter requests that, if a revision to the DC–9 SID is pending, the thresholds should be revised based on service history.

We do not agree to extend the thresholds. The manufacturer has advised us that the service data collected so far is not sufficient to justify extending the threshold values at this time. Additionally, the manufacturer has advised that there are no plans to increase any PSE inspection threshold values specified in Volume I of the DC–9 SID. No change has been made to the supplemental NPRM in this regard.

Request To Revise the Costs of Compliance

One commenter agrees that the original NPRM would require approximately 20 additional hours of labor to inspect each airplane. However, the commenter's data show that the time required to complete the inspections required by existing AD 96–13–03 is 571 labor hours rather than 362 work hours as specified in the existing AD. The commenter bases these labor hours on over 2,000 NDIs performed as part of the SID sampling program. The commenter also notes that the 571 hours of labor do not include time for access, since it performs these inspections at maintenance checks with access already opened. The commenter is requesting that the costs of compliance be revised accordingly.

We do not agree that the Costs of Compliance section needs to be revised. Although we acknowledge that the work hours for the commenter's fleet is more than the work hours estimated in the original NPRM, we also recognize that other operators' fleets may not require the same amount of work hours for the inspections. The work hours specified in the Costs of Compliance section are simply estimates based on the information that we have available from the manufacturer. Because of the differences involved with various airplane configurations and differences in airline maintenance procedures, there may be a significant difference in work hours necessary for operators to accomplish the inspections. Even if additional work hours are necessary for some airplanes, we do not have sufficient information to evaluate the number of airplanes that may be so affected or the number of additional work hours that may be required. Consequently, attempting to estimate work hours for each operator would be futile. No change is necessary to the supplemental NPRM in this regard.

Editorial Change

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

Additionally, we have determined that accomplishment of the requirements of paragraph (o) of the supplemental AD (inspection/replacement for certain repairs to the fuselage pressure shell in accordance with Boeing Report No. MDC 91K0263, ''DC–9/MD–80 Aging Aircraft Repair Assessment Program Document,'' Revision 1, dated October 2000), are also acceptable for compliance with the requirements of paragraph (m) of the supplemental AD and have revised paragraph (o) of the supplemental AD accordingly.

Explanation of Change Made to This AD

We have simplified paragraph (l) of the supplemental AD of this AD by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD for repair methods.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM. For the purposes of this proposed AD, a PSE is defined as an element that contributes significantly to the carrying of flight, ground or pressurization loads, and the integrity of that element is essential in maintaining

the overall structural integrity of the airplane.

Costs of Compliance

There are about 710 McDonnell Douglas transport category airplanes worldwide of the affected design. This supplemental NPRM would affect about 477 airplanes of U.S. registry, or 26 U.S. airline operators.

The recurring inspection costs, as required by AD–96–13–03, take 362 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $11,223,810, or $23,530 per airplane, per inspection cycle.

The incorporation of the revised procedures in this AD action will require approximately 20 additional work hours per operator to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost to the 26 affected U.S. operators to incorporate these revised procedures into the SID program is estimated to be $33,800, or $1,300 per operator.

Additionally, the number of required work hours for each proposed inspection (and the SID program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Further, any costs associated with special airplane scheduling are expected to be minimal.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–9671 (61 FR 31009, June 19, 1996) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD.

Comments Due Date

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

Affected ADs

(b) This AD supersedes AD 96–13–03.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; and DC–9–51 airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

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.

Requirements of AD 96–13–03

Revision of the FAA-Approved Maintenance Inspection Program

(f) Within 6 months after July 24, 1996 (the effective date of AD 96–13–03, amendment 39–9671), replace the FAA-approved maintenance inspection program with a revision that provides for inspection(s) of the principal structural elements (PSEs) defined in McDonnell Douglas Report No. L26–008, ''DC–9 Supplemental Inspection Document (SID),'' Section 2 of Volume I of McDonnell Douglas Report No. L26–008, ''DC–9 Supplemental Inspection Document (SID),'' Revision 4, dated July 1993, in accordance with Section 2 of Volume III–95, dated September 1995, of the SID.

Note 1: Operators should note that certain visual inspections of fleet leader operator sampling PSE's that were previously specified in earlier revisions of Volume III of the SID are no longer specified in Volume III–95 of the SID.

(1) Prior to reaching the threshold (N_{th}), but no earlier than one-half of the threshold ($\frac{1}{2}N_{th}$), specified for all PSE's listed in Volume III–95, dated September 1995, of the SID, inspect each PSE sample in accordance with the non-destructive inspection (NDI) procedures set forth in Section 2 of Volume II, dated July 1993. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2 of the NDI procedure that is specified in Volume III–95, dated September 1995, of the SID, until the requirements of paragraph (i) of this AD are accomplished.

(2) The NDI techniques set forth in Section 2 of Volume II, dated July 1993, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph.

(3) All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–95, dated September 1995, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Volume II of the SID, dated July 1993, is comprised of the following:

TABLE 1

Volume designation	Revision level shown on olume
Volume II–10/20	4
Volume II–20/30	5
Volume II–40	4
Volume II–50	4

Note 3: NDI inspections accomplished in accordance with the following Volume II of the SID provide acceptable methods for accomplishing the inspections required by this paragraph:

TABLE 2

Volume designation	Revision level	Date of revision
Volume II–10/20	4	July 1993.
Volume II–10–20	3	Apr. 1991.
Volume II–10/20	2	Apr. 1990.
Volume II–10/20	1	June 1989.
Volume II–20	Original	Nov. 1987.
Volume II–20/30	5	July 1993.
Volume II–20/30	4	Apr. 1991.
Volume II–20/30	3	Apr. 1990.
Volume II–20/30	2	June 1989.
Volume II–20/30	1	Nov. 1987.
Volume II–40	4	July 1993.
Volume II–40	3	Apr. 1991.
Volume II–40	2	Apr. 1990.
Volume II–40	1	June 1989.
Volume II–40	Original	Nov. 1987.
Volume II–50	4	July 1993.
Volume II–50	3	Apr. 1991.
Volume II–50	2	Apr. 1990.
Volume II–50	1	June 1989.
Volume II–50	Original	Nov. 1987.

(g) Any cracked structure detected during the inspections required by paragraph (f) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 4: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program that is required by this AD should include a damage tolerance assessment for that PSE.

New Requirements of This AD

Revision of the Maintenance Inspection Program

(h) Within 12 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection(s) of the PSEs, in accordance with Boeing Report L26–008, ''DC–9 All Series, Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated November 2002. Unless otherwise specified, all further references in this AD to the ''SID'' are to Revision 6, dated November 2002.

Non-Destructive Inspections (NDIs)

(i) For all PSEs listed in Section 2 of Volume I of the SID, perform an NDI for fatigue cracking of each PSE in accordance with the NDI procedures specified in Section 2 of Volume II, dated November 2004 of the SID, at the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For airplanes that have less than three-quarters of the fatigue life threshold ($^3/_4N_{th}$) as of the effective date of the AD: Perform an NDI for fatigue cracking no earlier than one-half of the threshold ($^1/_2N_{th}$) but prior to reaching three-quarters of the threshold ($^3/_4N_{th}$), or within 60 months after the effective date of this AD, whichever occurs later. Inspect again prior to reaching the threshold (N_{th}) or ΔNDI/2, whichever occurs later, but no earlier than ($^3/_4N_{th}$). Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(2) For airplanes that have reached or exceeded three-quarters of the fatigue life threshold ($^3/_4N_{th}$), but less than the threshold (N_{th}), as of the effective date of the AD: Perform an NDI prior to reaching the threshold (N_{th}), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(3) For airplanes that have reached or exceeded the fatigue life threshold (N_{th}) as of the effective date of the AD: Perform an NDI within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

Note 5: Volume II of the SID, dated November 2004 comprises the following:

TABLE 3

Volume designation	Revision level shown on volume
Volume II–10/20	6
Volume II–20/30	7
Volume II–40	6
Volume II–50	6

Discrepant Findings

(j) If any discrepancy (*e.g.*, a PSE cannot be inspected as specified in Volume II of the SID or does not match rework, repair, or modification description in Volume I of the SID) is detected during any inspection required by paragraph (i) of this AD, accomplish the action specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) If a discrepancy is detected during any inspection performed prior to $^3/_4N_{th}$ or N_{th}: The area of the PSE affected by the discrepancy must be inspected prior to N_{th} or within 18 months of the discovery of the discrepancy, whichever is later, in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

(2) If a discrepancy is detected during any inspection performed after N_{th}: The area of the PSE affected by the discrepancy must be inspected prior to the accumulation of an additional ΔNDI/2, measured from the last non-discrepant inspection finding, or within 18 months of the discovery of the discrepancy, whichever occurs later, in accordance with a method approved by the Manager of the Los Angeles ACO.

Reporting Requirements

(k) All negative, positive, or discrepant (discrepant finding examples are described in paragraph (j) of this AD) findings of the inspections accomplished under paragraph (i) of this AD must be reported to Boeing, at the times specified in, and in accordance with the instructions contained in, Section 4 of Volume I of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Corrective Actions

(l) Any cracked structure of a PSE detected during any inspection required by paragraph (i) of this AD must be repaired before further flight in accordance with a method approved by the Manager, Los Angeles ACO, or by using a method approved in accordance with procedures specified in paragraph (p) of this AD. Accomplish follow-on actions described in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, at the times specified.

(1) Within 18 months after repair, perform a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval.

(2) Before reaching 75% of the repair threshold as determined in paragraph (l)(1) of this AD, submit the inspection methods and repetitive inspection intervals for the repair for approval.

(3) Before the repair threshold, as determined in paragraph (l)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

Note 6: For the purposes of this AD, we anticipate that submissions of the DTA of the repair, if acceptable, should be approved within six months after submission.

Note 7: Advisory Circular AC 25.1529–1, ''Instructions for Continued Airworthiness of Structural Repairs on Transport Airplanes,'' dated August 1, 1991, is considered to be additional guidance concerning the approval of repairs to PSEs.

Inspection for Transferred Airplanes

(m) Before any airplane that has exceeded the fatigue life threshold (N_{th}) can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established per paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each PSE must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for

accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each PSE required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Inspections Accomplished Before the Effective Date of This AD

(n) Inspections accomplished prior to the effective date of this AD in accordance with Boeing Report No. L26–008, ''DC–9 All Series Supplemental Inspection Document (SID),'' Volume I, Revision 6, dated November 2002, are acceptable for compliance with the requirements of paragraph (i) of this AD.

Acceptable for Compliance

(o) Boeing Report MDC 91K0263, ''DC–9/MD–80 Aging Aircraft Repair Assessment Program Document,'' Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. These repairs and inspection/replacement programs are considered acceptable for compliance with the requirements of paragraphs (i), (l), and (m) of this AD for repairs subject to that document.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Los Angeles ACO, 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 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) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for alternative inspection procedures per AD 87–14–07 R1, amendment 39–6019; AD 94–03–01, amendment 39–8807; and AD 96–13–03, amendment 39–9671; are acceptable for compliance with the actions required by paragraph (f) of this AD for inspections performed before the requirements of paragraph (i) are accomplished.

(5) AMOCs approved previously for repairs per AD 87–14–07 R1, amendment 39–6019; AD 94–03–01, amendment 39–8807; and AD 96–13–03, amendment 39–9671; are acceptable for compliance with the requirements of paragraph (l) of this AD.

Issued in Renton, Washington, on February 23, 2006.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2157 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24076; Directorate Identifier 2006–NM–015–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This proposed AD would require replacing the shut-off and crossbleed valves of the bleed air system with new valves having hermetically sealed switches. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 6, 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 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 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–2006–24076; Directorate Identifier 2006–NM–015–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 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.

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 Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. The DAC advises that the manufacturer conducted a fuel system review and found that the shut-off and crossbleed valves of the bleed air system must be replaced with new shut-off and crossbleed valves having hermetically sealed switches. Shut-off and crossbleed valves of the bleed air system that do not have hermetically sealed switches may function as a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin (SB) 120–36–0016, Revision 01, dated October 4, 2004. The SB describes procedures for replacing the existing shut-off and crossbleed valves of the bleed air system with new shut-off and crossbleed valves having hermetically sealed switches. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–12–03, effective January 19, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil 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 DAC has kept the FAA informed of the situation described above. We have examined the DAC'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.

Costs of Compliance

This proposed AD would affect about 180 airplanes of U.S. registry. The proposed actions would take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $10,305 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,890,000, or $10,500 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):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–24076; Directorate Identifier 2006–NM–015–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 6, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes as identified in EMBRAER Service Bulletin 120–36–0016, Revision 01, dated October 4, 2004; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Replacing the Shut-Off and Crossbleed Valves

(f) Within 5,000 flight hours after the effective date of this AD, replace the shut-off and crossbleed valves of the bleed air system with new shut-off and crossbleed valves having hermetically sealed switches, in accordance with EMBRAER Service Bulletin 120–36–0016, Revision 01, dated October 4, 2004.

Parts Installation

(g) As of the effective date of this AD, no person may install any shut-off or crossbleed valve of the bleed air system with any shut-off or crossbleed valve that does not have hermetically sealed switches.

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 2005–12–03 , effective January 19, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on February 22, 2006.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2158 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24074; Directorate Identifier 2005–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) and CL–600–2D24 (Regional Jet Series 900) series airplanes. The existing AD currently requires repetitive detailed inspections for cracking or deformation, or pulled or missing fasteners, on the lower panel of the left- and right-hand main landing gear (MLG) doors, as applicable, and corrective actions if necessary. This proposed AD would reduce the repetitive inspection interval for certain airplanes. This proposed AD also adds airplanes to the applicability. This proposed AD results from a report of a MLG door departing from an airplane. We are proposing this AD to prevent failure of the lower panel of the MLG door, the lower panel's departure from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

DATES: We must receive comments on this proposed AD by April 6, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–24074; Directorate Identifier 2005–NM–213–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association,

business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

On October 23, 2003, we issued AD 2003–19–51, amendment 39–13353 (68 FR 61615, October 29, 2003), for certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) and CL–600–2D24 (Regional Jet Series 900) series airplanes (originally issued September 17, 2003, as an emergency airworthiness directive). That AD requires repetitive detailed inspections for cracking or deformation, or pulled or missing fasteners, on the lower panel of the left- and right-hand main landing gear (MLG) doors, as applicable, and corrective actions if necessary. That AD resulted from a report of a lower panel of the door of the right-hand MLG of a Model CL–600–2C10 series airplane departing the airplane during landing. We issued that AD to prevent failure of the lower panel of the MLG door, the lower panel's departure from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

Actions Since Existing AD Was Issued

Since we issued AD 2003–19–51, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an inboard MLG door departed from an airplane affected by the existing AD. The airplane was operating under an alternative means of compliance (AMOC) to the TCCA airworthiness directive that allowed extension of the repetitive interval when certain repairs or modifications where done. The TCCA determined that the inspection intervals should be reduced for those airplanes. The TCCA also determined that inspections are needed for additional airplanes affected by the identified unsafe condition.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, including Appendices A and B, dated June 2, 2005. The service bulletin describes procedures for doing repetitive inspections of the left- and right-hand inboard MLG doors for damage, and corrective actions if necessary. The inspections include doing a general visual inspection of the skin for damage such as loose, pulled, or missing fasteners, missing paint, or scratches around the rivet heads; and a detailed inspection of the inboard MLG door for cracking or deformation. The corrective actions include replacing the MLG door with a new or repaired MLG door. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2003–23R2, dated July 27, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada 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, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2003–19–51. This proposed AD would retain certain requirements of AD 2003–19–51 and would require accomplishing the actions specified in the service bulletin described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin/Canadian Airworthiness Directive.''

Differences Among the Proposed AD and the Service Bulletin/Canadian Airworthiness Directive

Although Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, and the Canadian airworthiness directive specify to submit certain information to the manufacturer, this proposed AD does not include that requirement.

Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, includes a note in the Accomplishment Instructions to inform operators to contact Bombardier if no accurate generic repair engineering order is available when accomplishing the repair. However, this proposed AD would require doing the repair using a method that we or TCCA (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 TCCA (or its delegated agent) approve would be acceptable for compliance with this proposed AD. The Canadian airworthiness directive references the limitations specified in the configuration deviation list (CDL) for airplanes that remove damaged inboard MLG doors. The information in the CDL has been revised since we issued AD 2003–19–51. For airplanes on which the door(s) have been removed in accordance with AD 2003–19–51, we would require revising the CDL to the latest revision.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2003–19–51. Since AD 2003–19–51 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2003–19–51	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).

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.

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.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2003–19–51).	1	$65	$65, per inspection cycle	83	$5,395, per inspection cycle.
Inspections (new proposed action)	1	65	$65, per inspection cycle	213	$13,854, per inspection cycle.
Revision (new proposed action)	1	65	$65, if necessary	213	Up to $13,854.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13353 (68 FR 61615, October 29, 2003) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2006–24074; Directorate Identifier 2005–NM–213–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 6, 2006.

Affected ADs

(b) This AD supersedes AD 2003–19–51.

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers (S/Ns) 10003 and subsequent; and Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes, S/Ns 15001 and subsequent; certificated in any category.

Unsafe Condition

(d) This AD results from a report of a main landing gear (MLG) door departing from an airplane. We are issuing this AD to prevent failure of the lower panel of the MLG door, the lower panel's departure from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

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 2003–19–51

Initial Compliance Time

(f) For Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes, S/Ns 10003 through 10999 inclusive; and Model CL–600–2D24 (Regional Jet series 900) series airplanes, S/Ns 15002 through 15990 inclusive: Perform the initial inspection specified in paragraph (g) of this AD at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD.

(1) For airplanes with fewer than 1,500 total flight cycles as of November 3, 2003, (the effective date of AD 2003–19–51): Do the inspections before the accumulation of 1,050 total flight cycles, or within 50 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with 1,500 or more total flight cycles as of November 3, 2003: Do the inspections within 10 flight cycles after the effective date of this AD.

Inspections

(g) For Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes, S/Ns 10003 through 10999 inclusive; and Model CL–600–2D24 (Regional Jet series 900) series airplanes, S/Ns 15002 through 15990 inclusive: At the applicable time specified in paragraph (f) of this AD, perform detailed inspections of the lower panel, part number (P/N) CC670–10520, of the left- and right-hand MLG doors for the conditions and in the areas specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD; and Figures 1, 2, and 3 of this AD.

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

magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Inspect the cross member, P/N CC670–10572, of the MLG door lower panel for cracking or deformation, in accordance with Figure 2 of this AD.

(2) Inspect the inner skin, P/N CC670–10577, of the MLG door lower panel at the cross member (P/N CC670–10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

(3) Inspect the outer skin, P/N CC670–10574, of the MLG door lower panel at the cross member (P/N CC670–10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

(4) Inspect the forward member, P/N CC670–10570, and aft member, P/N CC670–10571, of the MLG door lower panel, for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 3 of this AD. Figures 1 through 3 of this AD follow.

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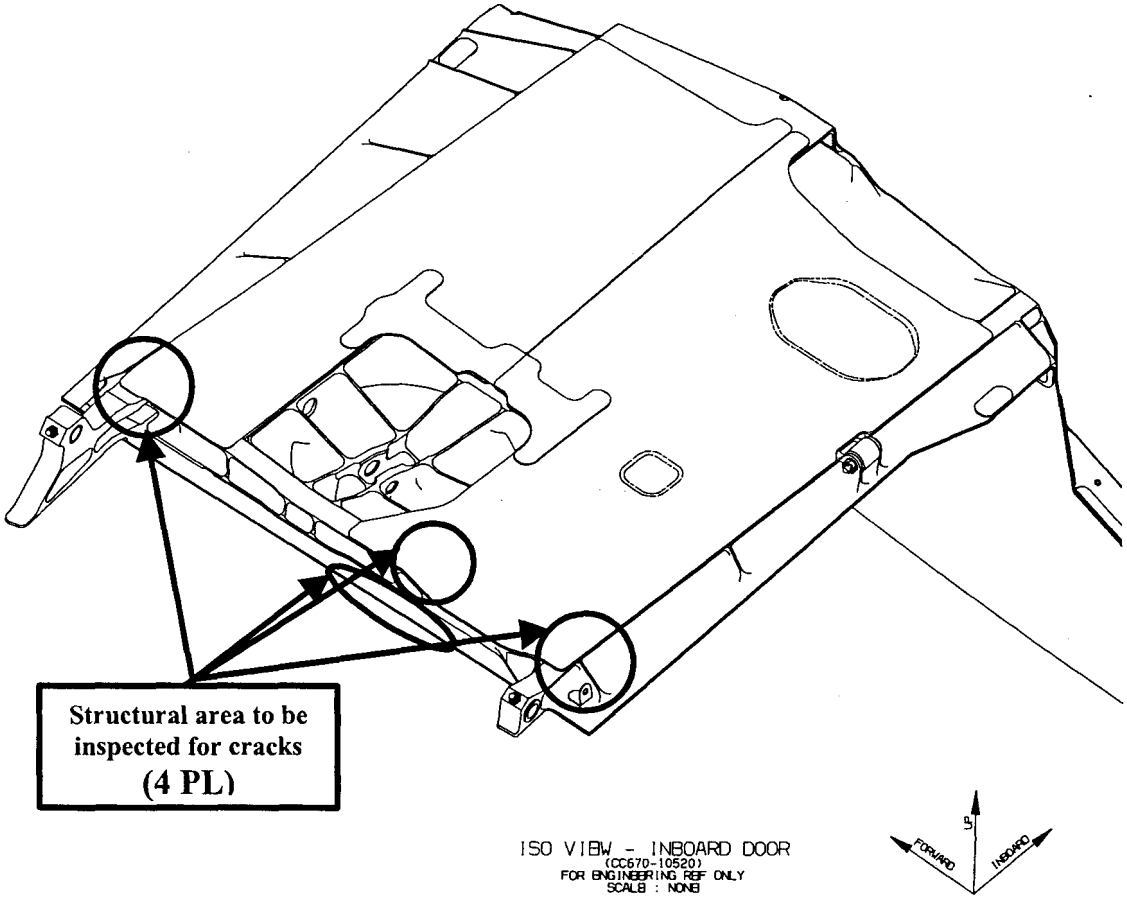

Figure 1
LH side shown
RH side opposite

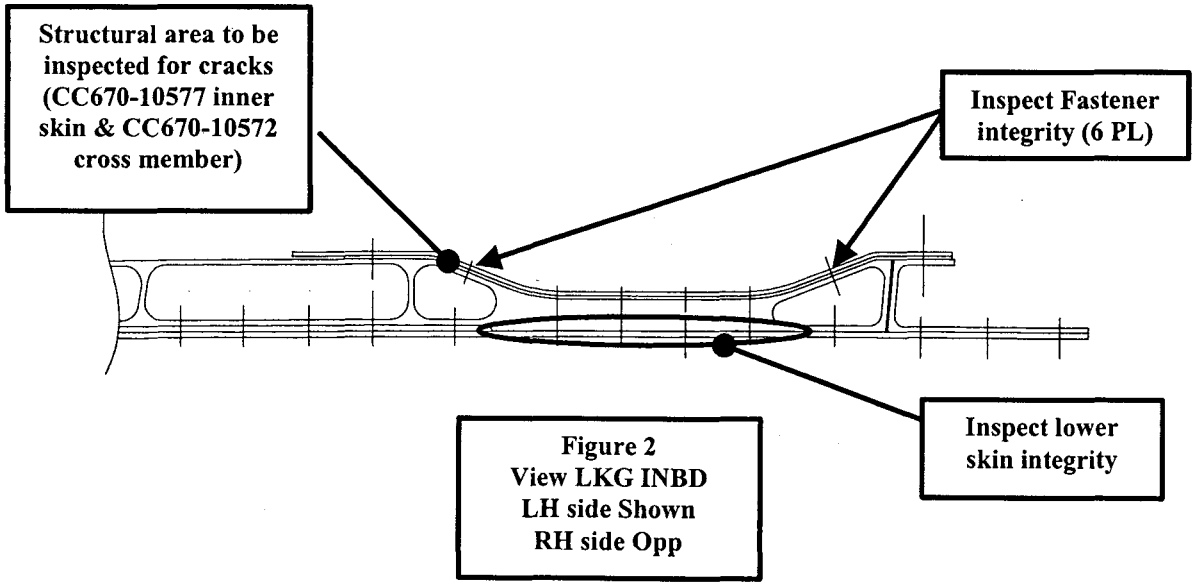

Figure 2
View LKG INBD
LH side Shown
RH side Opp

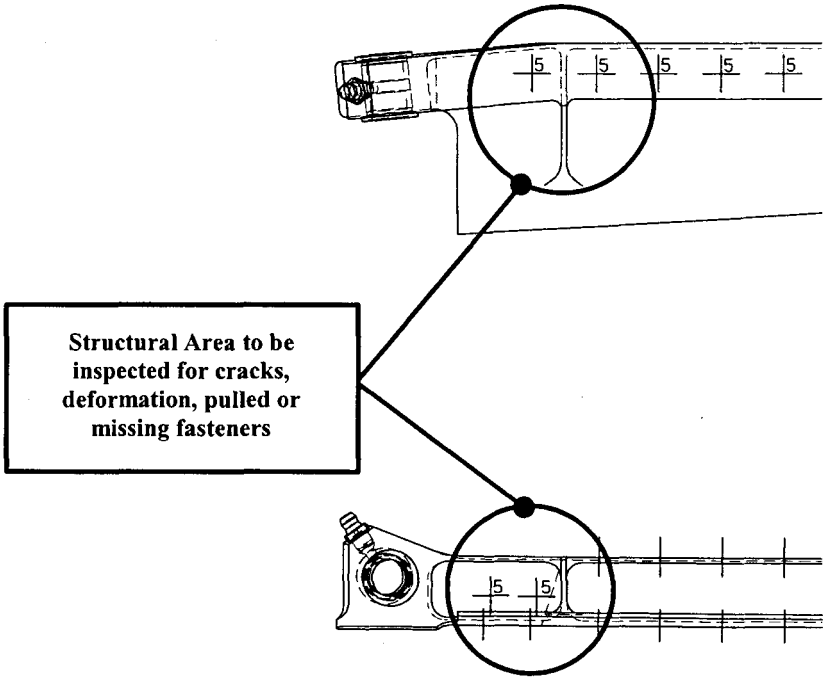

Figure 3
View LKG INBD
LH side Shown
RH side Opp

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Repetitive Inspections

(h) If no cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection required by paragraph (g) or (h) of this AD, repeat the inspections thereafter at intervals not to exceed 100 flight cycles.

Corrective Actions

(i) If any cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection done in accordance with paragraph (g) or (h) of this AD: Before further flight, accomplish paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) Repair the damage in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (or its delegated agent); and accomplish repetitive inspections in accordance with a

method and at a repetitive interval approved by same.

(2) Replace the lower panel assembly, P/N CC670–10520, of the affected MLG door with a new or serviceable lower panel assembly having the same P/N, in accordance with Task Cards 32–12–01–000–801–A01 and 32–12–01–400–801–A01 of the CRJ 700/900 Series Regional Jet Aircraft Maintenance Manual; and repeat the inspections specified in paragraph (g) of this AD at intervals not to exceed 100 flight cycles.

(3) Remove the lower panel assembly, P/N CC670–10520, of the affected MLG door, and accomplish paragraph (i)(3)(i) or (i)(3)(ii), as applicable.

(i) For Model CL600–2C10 (Regional Jet series 700 & 701) series airplanes: Revise the Configuration Deviation List (CDL), Appendix 1, of the airplane flight manual (AFM), to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

''For Model CL600–2C10 series airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 202.5 kg/door, or 450 lb/door

(2) Enroute Climb Weight is reduced by 445.5 kg/door, or 990 lb/door

(3) Landing Weight is reduced by 202.5 kg/door, or 450 lb/door

(4) Fuel Consumption is increased by +3.42% on fuel used/door

(5) Cruise Airspeed is limited to not more than 0.78 Mach.''

(ii) For Model CL–600–2D24 (Regional Jet series 900) series airplanes: Revise the CDL, Appendix 1, of the AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

''For Model CL600–2D24 series airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 245 kg/door, or 540 lb/door

(2) Enroute Climb Weight is reduced by 551 kg/door, or 1,215 lb/door

(3) Landing Weight is reduced by 245 kg/door, or 540 lb/door

(4) Fuel Consumption is increased by +3.42% on fuel used/door

(5)Cruise Airspeed is limited to not more than 0.78 Mach.''

New Requirements of This AD

Inboard MLG Door Inspections

(j) For all airplanes on which an inspection has not been done in accordance with paragraph (g) of this AD on or before the effective date of this AD: At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, do the inspections of the left- and right-hand inboard MLG doors for damage in accordance with Part A of the Accomplishment Instructions of the Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, including Appendix B, dated June 2, 2005, excluding Appendix A, dated June 2, 2005. Doing the inspections required by this paragraph terminates the actions required by paragraphs (f) through (i) of this AD.

(1) For airplanes that have accumulated fewer than 1,500 total flight cycles as of the effective date of this AD: Before the accumulation of 1,000 total flight cycles or within 50 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 1,500 flight cycles or more as of the effective date of this AD: Within 10 flight cycles after the effective date of this AD.

(k) For all airplanes on which an inspection has been done in accordance with paragraph (g) of this AD on or before the effective date of this AD and on which both doors have not been removed in accordance with paragraph (i)(3) of this AD: At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, do the inspections specified in paragraph (j) of this AD; except for airplanes on which one door has been removed in accordance with paragraph (i)(3) of this AD, do the inspections specified in paragraph (j) of this AD for the door that has not been removed. Doing the inspections required by this paragraph terminates the actions required by paragraphs (f) through (i) of this AD.

(1) For airplanes that are not subject to an approved alternative method of compliance (AMOC) that extends the inspection interval to 450 flight cycles: Within 100 flight cycles since the last inspection done in accordance with paragraph (g) of this AD.

(2) For airplanes that are subject to an approved AMOC that extends the inspection interval to 450 flight cycles: At the earlier of the times specified in paragraph (k)(2)(i) and (k)(2)(ii) of this AD:

(i) Within 450 flight cycles since the last inspection done in accordance with paragraph (g) of this AD.

(ii) Within 100 flight cycles since the last inspection done in accordance with paragraph (g) of this AD or within 50 cycles after the effective date of this AD, whichever occurs later.

(l) If no damage is found during any inspection done in accordance with paragraph (j) of this AD, repeat the inspections specified in paragraph (j) of this AD thereafter at intervals not to exceed 100 flight cycles.

Corrective Action—Replace or Remove MLG Door

(m) If any damage is found during any inspection done in accordance with paragraph (j) of this AD, before further flight, do the actions in paragraph (m)(1) or (m)(2) of this AD. Repeat the inspections specified in paragraph (j) of this AD thereafter at intervals not to exceed 100 flight cycles.

(1) Replace the inboard MLG door with a new or repaired door in accordance with Part B of the Accomplishment Instructions of the Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, including Appendix B, dated June 2, 2005, excluding Appendix A, dated June 2, 2005; except where the service bulletin specifies to contact the manufacturer for repair if no generic repair engineering order (REO) is available, before further flight, repair using a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or the Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(2) Remove the inboard MLG door in accordance with Part B of the Accomplishment Instructions of the Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, including Appendix B, dated June 2, 2005, excluding Appendix A, dated June 2, 2005; and accomplish paragraph (m)(2)(i) or (m)(2)(ii), as applicable.

(i) For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes and Model CL–600–2D15 (Regional Jet Series 705) airplanes: Revise the Configuration Deviation List (CDL), Appendix 1, of the airplane flight manual (AFM), to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM. Remove any existing CDL limitation required by paragraph (i)(3)(i) of this AD from the AFM.

''For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes and Model CL–600–2D15 (Regional Jet Series 705) airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 202.5 kg/door, or 450 lb/door

(2) Enroute Climb Weight is reduced by 445.5 kg/door, or 990 lb/door

(3) Landing Weight is reduced by 202.5 kg/door, or 450 lb/door

(4) Fuel Consumption is increased by +2.5% on fuel used/door

(5) Cruise Airspeed is limited to not more than 0.78 Mach

(6) The climb ceiling obtained from the Flight Planning and Cruise Control Manual (FPCCM) must be reduced by 1,000 ft/door.''

Note 2: When a statement with the information specified in paragraph (m)(2)(i) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(ii) For Model CL–600–2D24 (Regional Jet Series 900) airplanes: Revise the CDL, Appendix 1, of the AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM. Remove any existing CDL limitation required by paragraph (i)(3)(ii) of this AD from the AFM.

''For Model CL–600–2D24 (Regional Jet Series 900) airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 245 kg/door, or 540 lb/door

(2) Enroute Climb Weight is reduced by 551 kg/door, or 1,215 lb/door

(3) Landing Weight is reduced by 245 kg/door, or 540 lb/door

(4) Fuel Consumption is increased by +2.5% on fuel used/door

(5)Cruise Airspeed is limited to not more than 0.78 Mach

(6)The climb ceiling obtained from the Flight Planning and Cruise Control Manual (FPCCM) must be reduced by 1,000 ft/door.''

Note 3: When a statement with the information specified in paragraph (m)(2)(ii) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Revise CDL

(n) For airplanes on which the door(s) have been removed in accordance with paragraph (i)(3) of this AD: Within 30 days after the effective date of this AD, do the revision specified in paragraph (m)(2)(i) or (m)(2)(ii) of this AD, as applicable, and remove any revision required by paragraph (i)(3)(i) or (i)(3)(ii) of this AD.

No Reporting Required

(o) Although Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Actions Accomplished According to Previous Issue of Service Bulletin

(p) Actions accomplished before the effective date of this AD according to Bombardier Alert Service Bulletin A670BA–32–016, dated June 2, 2005, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(q)(1) The Manager, New York 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.

(3) AMOCs approved previously in accordance with AD 2003–19–51 are not approved as AMOCs with this AD.

Related Information

(r) Canadian airworthiness directive CF–2003–23R2, dated July 27, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on February 22, 2006.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2159 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24072; Directorate Identifier 2006–NM–016–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–120( ) Airplane Models in Operation

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 Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–120( ) airplane models in operation. This proposed AD would require replacing the de-icing system ejector flow control valves with new, improved control valves having hermetically sealed switches; and rewiring applicable connectors. This proposed AD results from a fuel system review conducted by the manufacturer. We are proposing this AD to prevent a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 6, 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 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 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–2006–24072; Directorate Identifier 2006–NM–016–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 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.

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 Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–120( ) airplane models in operation. The DAC advises that a fuel system review conducted by the manufacturer revealed that unsealed switches are present in the de-icing system control valves. This condition, if not corrected, could result in a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 120–30–0034, Revision 01, dated September 22, 2004. The service bulletin describes procedures for replacing the de-icing system ejector flow control valves with new, improved control valves having hermetically sealed switches; and rewiring applicable connectors. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–12–02, dated January 19, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil 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 DAC has kept the FAA informed of the situation described above. We have examined the DAC'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.

Costs of Compliance

This proposed AD would affect about 180 airplanes of U.S. registry. The proposed actions would take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $2,431 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $531,180, or $2,951 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):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–24072; Directorate Identifier 2006–NM–016–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 6, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–120( ) airplane models in operation, certificated in any category.

Unsafe Condition

(d) This AD results from a fuel system review conducted by the manufacturer. We

are issuing this AD to prevent a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Valve Replacement

(f) Within 5,000 flight hours after the effective date of this AD, replace the de-icing system ejector flow control valves, part number (P/N) 3D2376–06, with new, improved flow control valves having hermetically sealed switches, P/N 3D2376–07; and rewire the applicable connectors; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0034, Revision 01, dated September 22, 2004.

Previously Accomplished Actions

(g) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 120–30–0034, dated October 30, 2003, are considered acceptable for compliance with the corresponding actions 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 2005–12–02, dated January 19, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on February 23, 2006.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–3216 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24084; Directorate Identifier 2006–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Model Hawker 800XP airplanes. This proposed AD would require inspecting certain bus bars in the DA–A panel to ensure that the bus bars match the panel configuration and clearance is adequate between the bus bars and adjacent components, and performing corrective action if necessary. This proposed AD results from two reports of inadequate clearance between the bus bars in the DA–A panel. We are proposing this AD to prevent insufficient electrical isolation for the electrical bus configuration and inability of the flightcrew to isolate the bus bars in an emergency situation involving a dual generator failure, which could result in extra loads on the main ship batteries and consequent loss of power to the main essential bus.

DATES: We must receive comments on this proposed AD by April 21, 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 Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas, 67201–0085, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

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–2006–24084; Directorate Identifier 2006–NM–017–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 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

We have received two reports of inadequate clearance between the bus bars in the DA–A panel on Raytheon Model Hawker 800XP airplanes. This condition, if not corrected, could result in insufficient electrical isolation for the electrical bus configuration and

inability of the flightcrew to isolate the bus bars in an emergency situation involving a dual generator failure, which could result in extra loads on the main ship batteries and consequent loss of power to the main essential bus.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 24–3745, Revision 1, dated September 2005. The service bulletin describes procedures for inspecting certain bus bars in the DA–A panel to ensure that the bus bars match the panel configuration and clearance is adequate between the bus bars and adjacent components, and performing corrective action if necessary. For any bus bar that does not match the panel configuration, or if inadequate clearance exists, the corrective action includes removing the applicable bus bar(s), straightening the bus bar(s) and lug(s) if necessary, and reconfiguring the bus bars to match the configuration shown in Figure 1 of the service bulletin.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under Difference Between Proposed AD and Service Bulletin.

Difference Between Proposed AD and Service Bulletin

Although the Accomplishment Instructions of the service bulletin referenced in this proposed AD specify to submit certain information to the manufacturer, this proposed AD does not include that requirement.

Clarification of Service Bulletin Note

The service bulletin includes a note in the Accomplishment Instructions to inform operators to contact Raytheon ''should any difficulty be encountered'' in accomplishing the service bulletin. We have included Note 2 in this proposed AD to clarify that any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance under paragraph (i)(1) of this proposed AD.

Costs of Compliance

There are about 164 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 123 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $7,995, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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):

Raytheon Aircraft Company: Docket No. FAA–2006–24084; Directorate Identifier 2006–NM–017–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model Hawker 800XP airplanes, certificated in any category; serial numbers 258541, 258556, 258567 through 258609 inclusive, 258611 through 258628 inclusive, 258630 through 258684 inclusive, and 258686 through 258728 inclusive.

Unsafe Condition

(d) This AD results from two reports of inadequate clearance between the bus bars in the DA–A panel. We are issuing this AD to prevent insufficient electrical isolation for the electrical bus configuration and inability of the flightcrew to isolate the bus bars in an emergency situation involving a dual generator failure, which could result in extra loads on the main ship batteries and consequent loss of power to the main essential bus.

Compliance

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

Inspection/Corrective Action

(f) Within 30 days after the effective date of this AD: Do a detailed inspection of the four bus bars in the DA–A panel to ensure that the bus bars match the panel configuration and clearance is adequate between the bus bars and adjacent components, by doing all the actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3745, Revision 1, dated September 2005. Accomplish any applicable corrective action before further flight in accordance with the service bulletin.

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

Note 2: A note in the Accomplishment Instructions of the Raytheon service bulletin instructs operators to contact Raytheon if any difficulty is encountered in accomplishing the service bulletin. However, any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance (AMOC) under paragraph (i)(1) of this AD.

Inspections Accomplished According to Previous Issue of Service Bulletin

(g) Inspections accomplished before the effective date of this AD according to Raytheon Service Bulletin SB 24–3745, dated September 2005, are considered acceptable for compliance with the inspections specified in paragraph (f) of this AD.

No Reporting Requirement

(h) Although the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3745, Revision 1, dated September 2005, specify submitting certain information 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.

Issued in Renton, Washington, on February 27, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–3219 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24073; Directorate Identifier 2002–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes Equipped With a No. 3 Cargo Door

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 727–200 series airplanes. The existing AD currently requires initial and repetitive inspections for cracks in the forward frame of the No. 3 cargo door cutout; and corrective actions, if necessary. The existing AD also provides for an optional structural modification, which terminates the repetitive inspections. This proposed AD would reduce the compliance time for the initial inspections and add an optional method of inspection for both the initial and repetitive inspections. This proposed AD would also add initial and repetitive inspections of an additional area and repair if necessary. Additionally, this proposed AD would clarify that the previously optional structural modification is now required by other rulemaking. This proposed AD results from additional reports of cracking in the forward frame of the No. 3 cargo door cutout. We are proposing this AD to detect and correct cracking of the forward frame and fuselage skin of the No. 3 cargo door cutout, which could result in failure of the frame and skin, and consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by April 21, 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.

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

FOR FURTHER INFORMATION CONTACT: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''Docket No. FAA–2006–24073; Directorate Identifier 2002–NM–272–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 may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

On August 10, 1987, we issued AD 86–17–05 R1, amendment 39–5714 (52 FR 32534, August 28, 1987), for certain Boeing Model 727–200 series airplanes. AD 86–17–05 R1 requires initial and repetitive visual inspections of the forward frame of the No. 3 cargo door cutout for cracks, and repair of any crack detected. That AD also provides for optional structural modification of uncracked frames, which terminates the repetitive inspections.

Actions Since Existing AD Was Issued

Since we issued AD 86–17–05 R1, we have received reports indicating that the frame of the No. 3 cargo door cutout was severed on two Model 727–200 series airplanes. Both airplanes had accumulated approximately 24,500 total flight cycles (*i.e.*, approximately 4,800 flight cycles fewer than the threshold specified in AD 86–17–05 R1 for the initial inspection of the frame.) We have determined that this damage was a result of fatigue cracking. Cracking of the forward frame of the No. 3 cargo door cutout, if not corrected, can result in failure of the forward frame of the No. 3 cargo door cutout and consequent rapid decompression of the airplane.

Other Relevant Rulemaking

Also since the issuance of AD 86–17–05 R1, we issued AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990), for certain Boeing Model 727 series airplanes. That AD requires certain structural modifications including a frame reinforcement preventative modification of the forward frame of the No. 3 cargo door cutout. Boeing Alert Service Bulletin 727–53A0169, Revision 1, dated March 28, 1986; Revision 2, dated May 23, 1986; Revision 3, dated June 11, 1987; and Revision 4, dated January 21, 1989; are referenced in Boeing Document D6–54860, Revision C, dated December 11, 1989 (which is referenced as the appropriate source of service information for accomplishing the structural modifications in AD 90–06–09) as acceptable sources of service information for accomplishing the frame reinforcement preventative modification of the forward frame of the No. 3 cargo door cutout. Doing the frame reinforcement preventative modification of the forward frame of the No. 3 cargo door cutout, as required by paragraph A. of AD 90–06–09, terminates the repetitive inspections required by this proposed AD.

Relevant Service Information

We have reviewed Boeing Service Bulletins 727–53A0169, Revision 5, dated November 2, 1989; and Revision 6, dated September 28, 2002. The service bulletins describe procedures for an initial penetrant or visual inspection of the forward and aft sides of the forward frame of the No. 3 cargo door cutout, including a portion of the exterior skin, frame web, and inner flanges, to find cracking; and related investigative and corrective actions, if necessary. The related investigative actions include performing repetitive inspecting if no crack is found and following repair of any crack that is found. The corrective actions include contacting Boeing for repair instructions for any crack found in the skin and certain cracks found in the frame; replacing any cracked segment of the frame with a new or serviceable segment, or repairing any crack found in the frame and reporting certain information to Boeing following the repair; and inspections for repairs made previously. The service bulletin also describes procedures for a frame reinforcement preventative modification of the forward frame of the No. 3 cargo door cutout that would eliminate the need for the repetitive inspections. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. We are proposing to supersede AD 86–17–05 R1. This proposed AD would continue to require initial and repetitive inspections to find cracking in the forward frame of the No. 3 cargo door cutout; and corrective actions, if necessary. This proposed AD would reduce the compliance time for the initial inspections and add an optional method of inspection for both the initial and repetitive inspections. This proposed AD would also add an initial and repetitive inspections of an additional inspection area, and repair if necessary. Additionally, this proposed AD would clarify that the previously optional structural modification is now required by other rulemaking. This proposed AD would also require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002, only specifies a ''visual inspection'' (in addition to the penetrant inspection) for cracking of the forward frame of the No. 3 cargo door cutout. We have determined that the procedures for this inspection in the service bulletin should be described as a ''detailed inspection.'' We have included Note 1 in this AD to define this type of inspection.

Additionally, the service bulletin describes procedures for accomplishing a structural modification that would terminate the repetitive inspections also described in that service bulletin. The service bulletin recommends accomplishing the structural modification prior to an airplane accumulating 60,000 total flight cycles. We have determined that this proposed AD should not contain a requirement for that terminating structural modification, because we have previously issued AD 90–06–09, which currently requires that structural modification for the affected airplanes.

Although the Accomplishment Instructions of the service bulletin describe procedures for submitting inspection findings to Boeing, we are not requiring that action in this proposed AD.

Clarification of Items Referenced in the Service Bulletin

Paragraph 3.B.7.c. of the Accomplishment Instructions and Step 1 of Figure 2 of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002, refer to ''Detail 1'' and ''Detail 2.'' However, in the drawing portion of Figure 2, those details are labeled ''Detail A'' and Detail ''B.'' Therefore, when instructed to refer to Detail 1 of Figure 2, operators should refer to Detail A; when instructed to refer to Detail 2 of Figure 2, operators should refer to Detail B. We have learned that Boeing intends to publish an information notice to inform operators of this issue.

Changes to Existing AD

This proposed AD would retain the requirements of AD 86–17–05 R1 (including the requirements of AD 86–17–05). Since AD 86–17–05 R1 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 86–17–05 R1	Corresponding requirement in this proposed AD
Paragraph A	Paragraph (f).
Paragraph B	Paragraph (g).
Paragraph C	Paragraph (h).
Paragraph D	Paragraph (n).

We have removed all references to ''later FAA-approved revisions of the applicable service bulletin'' in the ''Requirements of AD 86–17–05 R1 With Reduced Threshold and New Optional Inspection Method,'' to be consistent with FAA policy. We cannot use the phrase, ''or later FAA-approved revisions,'' in ADs because it violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, in paragraph (m) of this proposed AD, we are giving operators credit for actions done before the effective date of this AD in accordance with Revision 2, dated May 23, 1986; Revision 3, dated June 11, 1987; Revision 4, dated January 21, 1988; and Revision 5, dated November 2, 1989, of Boeing Service Bulletin 727–53A0169. We may decide to approve later revisions of the service bulletin as an alternative method of compliance with this proposed AD, as provided by paragraph (p) of this proposed AD.

We have also changed the term ''landings'' in the ''Requirements of AD 86–17–05 R1 With Reduced Threshold and New Optional Inspection Method,'' to ''flight cycles'' to be consistent with the new requirements of this proposed AD. This change has no effect on the compliance times specified in the ''Requirements of AD 86–17–05 R1 With Reduced Threshold and New Optional Inspection Method.''

Costs of Compliance

There are about 269 airplanes of the affected design in the worldwide fleet. The new requirements of this AD add no additional economic burden. The current costs for U.S. operators to comply with this proposed AD are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 86–17–05 R1), per inspection cycle.	6	$65	None	$390, per inspection cycle	166	$64,740, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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 FAA amends § 39.13 by removing amendment 39–5714 (52 FR 32534, August 28, 1987) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–24073; Directorate Identifier 2002–NM–272–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 21, 2006.

Affected ADs

(b) This AD supersedes AD 86–17–05 R1.

Applicability

(c) This AD applies to Boeing Model 727–200 series airplanes, certificated in any category, equipped with a No. 3 cargo door, as identified in Boeing Service Bulletin 727–53A0169, Revision 2, dated May 23, 1986.

Unsafe Condition

(d) This AD results from additional reports of cracking in the forward frame of the No. 3 cargo door cutout. We are issuing this AD

to detect and correct cracking of the forward frame and fuselage skin of the No. 3 cargo door cutout, which could result in failure of the frame and consequent rapid decompression 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.

Requirements of AD 86–17–05 RL With Reduced Threshold and New Optional Inspection Method

Inspections

(f) At the earlier of the times specified in paragraphs (f)(1) and (f)(2) of this AD: Do a penetrant or detailed inspection of the forward frame of the No. 3 cargo door cutout for cracking, in accordance with paragraph C. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 2, dated May 23, 1986. After the effective date of this AD, the penetrant or detailed inspection must be done in accordance with paragraph 3.B.3. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002. If any cracking is found, repair in accordance with paragraph (h) or (l) of this AD, as applicable. Repeat the inspection at intervals not to exceed 2,200 flight cycles, until the preventative modification specified in paragraph (n) of this AD is done.

(1) Within the next 300 flight cycles after September 3, 1987 (the effective date of AD 86–17–05 R1), or prior to accumulating 29,000 total flight cycles, whichever occurs later, unless accomplished within the last 1,900 flight cycles.

(2) Prior to accumulating 18,000 total flight cycles, or within 2,200 flight cycles after the effective date of this AD, whichever occurs later.

(g) At the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a detailed inspection of the forward frame of the No. 3 cargo door cutout for cracking, in accordance with paragraphs D. and E. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 2, dated May 23, 1986. After the effective date of this AD, the detailed inspection must be done in accordance with paragraphs 3.B.4. and 3.B.5. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002. If any cracking is found, repair in accordance with paragraph (h) or (l) of this AD, as applicable. Repeat the inspection at intervals not to exceed 2,200 flight cycles, until the preventative modification specified in paragraph (n) of this AD is done.

(1) Within the next 300 flight cycles after September 3, 1987, or prior to accumulating 35,000 total flight cycles, whichever occurs later, unless accomplished within the last 1,900 flight cycles.

(2) Prior to accumulating 18,000 total flight cycles, or within 2,200 flight cycles after the effective date of this AD, whichever occurs later.

Repair

(h) Before further flight, repair any crack in the forward frame of the No. 3 cargo door cutout found before the effective date of this AD during any inspection required by paragraph (f) or (g) of this AD, in accordance with paragraph G. of the Accomplishment Instructions in Boeing Service Bulletin 727–53A0169, Revision 2, dated May 23, 1986. Repeat the inspections specified in paragraphs (f) and (g) of this AD at intervals not to exceed 2,200 flight cycles, for all areas of the forward frame not covered by the repair, in accordance with the Accomplishment Instructions of paragraphs C., D., and E. of Boeing Service Bulletin 727–53A0169, Revision 2, dated May 23, 1986.

New Requirements of This AD

Inspection of Repairs of the Frame Done Before the Effective Date of the AD

(i) For any repair to the forward frame of the No. 3 cargo door cutout done, as required by paragraph (h) of this AD, before the effective date of this AD: Within 18,000 flight cycles following the repair, or 2,200 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection of the repair for cracking in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002. Thereafter, repeat the inspection at intervals not to exceed 2,200 flight cycles, until the preventative modification specified in paragraph (n) of this AD is done.

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

New Inspections of Skin Surrounding the Frame

(j) Prior to the accumulation of 18,000 total flight cycles, or within 2,200 flight cycles after the effective date of this AD, whichever occurs later: Do a penetrant or detailed inspection for cracking of the fuselage skin of the No. 3 cargo door cutout between stringers S–24 and S–27, in accordance with paragraph 3.B.3. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002. Repeat the inspection at intervals not to exceed 2,200 flight cycles, until the preventative modification specified in paragraph (n) of this AD is done.

Repair of Cracked Skin

(k) If any crack is found in the fuselage skin during any inspection required by paragraph (j) of this AD: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

Repair of Cracked Frames and Post-Repair Inspections

(l) If, after the effective date of this AD, any crack is found in the forward frame of the No. 3 cargo door cutout during any inspection required by paragraph (f), (g), or (i) of this AD: Before further flight, do the actions specified in paragraph (l)(1), (l)(2), or (l)(3) of this AD, as applicable. Inspect the repair within 18,000 flight cycles following the repair, in accordance with paragraphs 3.B.4. and 3.B.5. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002. Thereafter, repeat the inspections at intervals not to exceed 2,200 flight cycles, until the preventative modification specified in paragraph (n) of this AD is done.

(1) If cracks have not severed the inner flange, do an interim repair using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(2) Repair the crack in accordance with paragraph 3.B.7.b. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002.

(3) Replace the cracked segment of the frame with a new or serviceable component and install the frame reinforcement preventative modification, in accordance with paragraph 3.B.7.c. of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0169, Revision 6, dated September 28, 2002. This action terminates the requirements of this AD.

Repairs Done According to Previous Issues of the Service Bulletin

(m) Inspections and repairs done before the effective date of this AD in accordance with Boeing Service Bulletin 727–53A0169, Revision 2, dated May 23, 1986; Revision 3, dated June 11, 1987; Revision 4, dated January 21, 1988; and Revision 5, dated November 2, 1989, are acceptable for compliance with the corresponding requirements of paragraphs (h), (k), and (l) of this AD, as applicable.

Terminating Modification Required by AD 90–06–09

(n) At the same time as the applicable inspections provided in paragraphs (f), (g), (i), and (j) of this AD are accomplished, doing the frame reinforcement preventative modification required by paragraph A. of AD 90–06–09 or the frame reinforcement preventative modification specified in Figure 2 of Boeing Service Bulletins 727–53A0169, Revision 5, dated November 2, 1989; and Revision 6, dated September 28, 2002; terminates the requirements of this AD. Paragraph A. of AD 90–06–09 references Boeing Document D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Structural Modification Program—Model 727'' as the appropriate source of service information for accomplishing the frame reinforcement preventative modification (along with numerous other structural modifications required by paragraph A. of AD 90–06–09).

Information Submission

(o) Although the service bulletins referenced in this AD specify to submit

certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(p) (1) The Manager, Seattle ACO, 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) An AMOC approved previously in accordance with AD 86–17–05 R1, is approved as an AMOC with the corresponding requirements and provisions of this AD.

Issued in Renton, Washington, on February 23, 2006.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–3221 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24075; Directorate Identifier 2005–NM–235–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes. This proposed AD would require a one-time inspection to see if a faulty uplock axle for the shock strut of the main landing gear (MLG) is installed, and replacing the uplock axle with a new uplock axle if necessary. This proposed AD results from a report of a cracked uplock axle caused by hydrogen embrittlement during the manufacturing process. We are proposing this AD to prevent failure of the uplock mechanism, which, combined with a loss of hydraulic pressure, could result in an uncommanded extension of the MLG.

DATES: We must receive comments on this proposed AD by April 6, 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden, 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–2006–24075; Directorate Identifier 2005–NM–235–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 Luftfartsstyrelsen (LFS), which is the airworthiness authority for Sweden, notified us that an unsafe condition may exist on certain Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes. The LFS advises that a cracked uplock axle for the shock strut of the main landing gear (MLG) has been found. The crack was caused by hydrogen embrittlement during the manufacturing process. The LFS further advises that all uplock axles produced in the same batch must be removed from service and scrapped. A cracked uplock axle, combined with a loss of hydraulic pressure, if not corrected, could result in an uncommanded extension of the MLG.

Relevant Service Information

Saab has issued Saab Service Bulletin 340–32–132, dated November 3, 2005. The service bulletin describes procedures for inspecting the shock strut of the MLG to see if an uplock axle with an affected serial number is installed, and replacing the uplock axle with a new uplock axle if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The LFS mandated the service information and issued Swedish airworthiness directive 1–199, dated November 9, 2005, to ensure the continued airworthiness of these airplanes in Sweden.

The Saab service bulletin refers to APPH Service Bulletins AIR83022–32–31, Revision 1; and AIR83064–32–11, Revision 1; both dated October 2005; as additional sources of service

information for identifying uplock axles with affected serial numbers, and replacing the axles if necessary. The APPH service bulletins are attached to the Saab service bulletin.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Sweden 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 LFS has kept the FAA informed of the situation described above. We have examined the LFS'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.

Costs of Compliance

This proposed AD would affect about 248 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $16,120, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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):

Saab Aircraft AB: Docket No. FAA–2006–24075; Directorate Identifier 2005–NM–235–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 6, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SAAB Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes, certificated in any category; serial numbers SAAB SF340A –004 through –159 inclusive, and SAAB 340B –160 through –459 inclusive.

Unsafe Condition

(d) This AD results from a report of a cracked uplock axle of the main landing gear (MLG) shock strut, caused by hydrogen embrittlement during the manufacturing process. We are proposing this AD to prevent failure of the uplock mechanism, which, combined with a loss of hydraulic pressure, could result in an uncommanded extension of the MLG.

Compliance

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

Inspection To Determine Part Number

(f) Within 6 months after the effective date of this AD, inspect the uplock axle of the MLG shock strut to determine whether an affected serial number (S/N) is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the S/N of the uplock axle can be conclusively determined from that review. Do the inspection in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–132, dated November 3, 2005.

Note 1: The Saab service bulletin refers to APPH Service Bulletins AIR83022–32–31, Revision 1; and AIR83064–32–11, Revision 1; both dated October 2005; as additional sources of service information for identifying uplock axles with affected serial numbers, and replacing the axles if necessary. The APPH service bulletins are attached to the Saab service bulletin.

Corrective Action

(g) Before further flight after accomplishing the inspection required by paragraph (f) of this AD: Replace with a new uplock axle any uplock axle with an affected S/N identified by the inspection in paragraph (f) of this AD. Do all actions in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–132, dated November 3, 2005.

Parts Installation

(h) As of the effective date of this AD, no person may install an uplock axle on any airplane if it has an affected S/N identified in accordance with paragraph (f) of this AD.

No Reporting Requirement

(i) Although the Accomplishment Instructions of Saab Service Bulletin 340–32–132, dated November 3, 2005, specify to send a report with the serial number of replaced uplock axles to APPH Ltd., this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) Swedish airworthiness directive 1–199, dated November 9, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on February 22, 2006.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–3227 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–27255; File No. S7–06–06; File No. 4–512]

RIN 3235–AJ51

Mutual Fund Redemption Fees

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing amendments to the redemption fee rule we recently adopted. The rule, among other things, requires most open-end investment companies (''funds'') to enter into agreements with intermediaries, such as broker-dealers, that hold shares on behalf of other investors in so called ''omnibus accounts.'' These agreements must provide funds access to information about transactions in these accounts to enable the funds to enforce restrictions on market timing and similar abusive transactions. The Commission is proposing to amend the rule to clarify the operation of the rule and reduce the number of intermediaries with which funds must negotiate information-sharing agreements. The amendments are designed to address issues that came to our attention after we had adopted the rule, and are designed to reduce the costs to funds (and fund shareholders) while still achieving the goals of the rulemaking.

DATES: Comments must be received on or before April 10, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–06–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–06–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Thoreau Bartmann, Staff Attorney, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Commission today is proposing amendments to rule 22c–2 [1] under the Investment Company Act of 1940 [2] (the ''Investment Company Act'' or the ''Act'').[3]

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I. Background

On March 11, 2005, the Commission adopted rule 22c–2 under the Investment Company Act.[4] We adopted the rule to help address abuses associated with short-term trading of fund shares. Rule 22c–2 provides that if a fund redeems its shares within seven days,[5] its board must consider whether to impose a fee of up to two percent of the value of shares redeemed shortly after their purchase (''redemption fee'').[6] The rule also requires such a fund to enter into agreements with its intermediaries that provide fund management the ability to identify investors whose trading violates fund restrictions on short-term trading.[7]

When we adopted rule 22c–2 last March, we asked for additional comment on (i) whether the rule should include uniform standards for redemption fees,[8] and (ii) any problems with the rule that might arise during the course of implementation.[9] We received over 100 comment letters in response to the request for comment.[10] Commenters expressed various views on the need for uniform standards, but a number of commenters also raised concerns with the basic requirements of the rule.

In their letters in response to the rule's adoption, commenters representing fund managers and other

[1] 17 CFR 270.22c–2.

[2] 15 U.S.C. 80a.

[3] Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to ''rule 22c–2'' or any paragraph of the rule will be to 17 CFR 270.22c–2.

[4] *See* Mutual Fund Redemption Fees, Investment Company Act Release No. 26782 (Mar. 11, 2005) [70 FR 13328 (Mar. 18, 2005)] (''Adopting Release'').

[5] Because the large majority of funds redeem shares within seven days of purchase, the practical effect of rule 22c–2, and these proposed amendments, would be to require most funds to comply with the rule's requirements. Therefore, throughout this Release we may describe funds as being ''required to comply'' with a provision of the rule, when the actual requirement only applies if a fund redeems its shares within seven days. A fund that does not redeem its shares within seven days would not be required to comply with those provisions of rule 22c–2.

[6] Rule 22c–2(a)(1). Under the rule, the board of directors must either (i) approve a fee of up to 2% of the value of shares redeemed, or (ii) determine that the imposition of a fee is not necessary or appropriate. *Id.*

[7] Under the rule, the fund (or its principal underwriter) must enter into a written agreement with each of its financial intermediaries under which the intermediary agrees to (i) provide, at the fund's request, identity and transaction information about shareholders who hold their shares through an account with the intermediary, and (ii) execute instructions from the fund to restrict or prohibit future purchases or exchanges. The fund must keep a copy of each written agreement for six years. Rule 22c–2(a)(2),(3).

[8] *See* Adopting Release, *supra* note 4, at Section II.C. As we noted when we adopted the rule, ''[a]lthough we received comment on these [uniform standards] issues during the initial comment period, those comments were offered in the context of a mandatory redemption fee'' rather than in the context of the voluntary approach that we adopted. *See id.*

[9] *See id.*

[10] Comment letters on the 2004 proposal and the 2005 adoption are available in File No. S7–11–04, which is accessible at *http://www.sec.gov/rules/proposed/s71104.shtml*. References to comment letters are to letters in that file.

market participants stated that implementing the rule would be more costly than we had anticipated, and requested that we address certain interpretive issues that arose in connection with the implementation of the rule.[11] The amendments we are proposing today address concerns and questions regarding rule 22c–2 that commenters have brought to our attention. These amendments are designed to reduce the costs of complying with the rule and clarify its application in certain circumstances.[12]

We also received comments on whether we should provide for a uniform redemption fee applicable to those funds whose directors determined to impose a redemption fee. While most commenters asserted that funds and intermediaries would likely achieve certain benefits or cost savings if the Commission mandated uniform redemption fee standards,[13] others disagreed, asserting that the best way to serve funds, intermediaries, and investors was by allowing each fund to adopt redemption fee policies that best fit its particular circumstances.[14] Among the commenters who argued that uniform standards would benefit market participants, no consensus emerged as to what those uniforms standards should be, if they were adopted. We are taking the commenters' views under advisement, but are not proposing uniform redemption fee standards at this time.

II. Discussion

The amendments to rule 22c–2 we are proposing today (i) limit the types of intermediaries with which funds must negotiate information-sharing agreements, (ii) address the rule's application when there are chains of intermediaries, and (iii) clarify the effect of a fund's failure to obtain an agreement with any of its intermediaries.

A. Small Intermediaries

Rule 22c–2 prohibits a fund from redeeming shares within seven days unless, among other things, the fund enters into written agreements with its financial intermediaries (such as broker-dealers and retirement plan administrators)[15] that hold shares on behalf of other investors.[16] Under those agreements, the intermediaries must agree to provide, at the fund's request, the shareholder identity (*i.e.*, taxpayer identification number) and transaction information,[17] and carry out instructions from the fund to restrict or prohibit further purchases or exchanges by a shareholder (as identified by the fund) that has engaged in trading that violates the fund's market timing policies.[18] We designed this provision to enable funds to obtain the information that they need to monitor short-term trading in omnibus accounts and enforce their market timing policies.[19]

Many fund commenters expressed concern that the requirement would necessitate reviewing a large number of their shareholder accounts in order to determine which shareholders meet the definition of ''financial intermediary.'' [20] They noted that because the definition encompasses any entity that holds securities in nominee

[11] For example, a number of commenters in their 2005 letters objected to the definition of ''financial intermediary'' and to the requirement that funds enter into agreements with these intermediaries to receive transaction information upon request. *See, e.g.*, Comment Letters of OppenheimerFunds, Inc. (May 9, 2005), T. Rowe Price Associates, Inc. (May 24, 2005), and the Vanguard Group (June 1, 2005).

[12] We received a number of comments from insurance companies and other market participants that sell variable insurance products. Many of these commenters were concerned that rule 22c–2 could expose insurance companies to increased liability. These commenters stated that variable insurance product contracts typically include clauses that specify the maximum charges and fees that an insurance company can assess against an annuity holder. We do not believe that redemption fees charged pursuant to rule 22c–2 should be interpreted to cause insurance companies to breach their contracts with annuity holders. Redemption fees are not fees that the insurance companies are themselves imposing pursuant to the contract between the insurance company and its customer. Instead, the *funds* underlying the separate accounts will impose any redemption fees that are charged. *See Miller* v. *Nationwide Life Ins. Co.*, 2003 WL 22466236 (E.D. La.) (Oct. 29, 2003), *aff'd on other grounds*, 391 F.3d 698 (5th Cir. 2004).

[13] Comment Letter of Flexible Plan Investments Ltd., at 2 (May 9, 2005) (''[O]ne of the most complicating factors caused by redemption fees is the lack of uniformity in their calculation and imposition * * * When intermediaries and advisors are dealing with many platforms and fund families, sorting out the requirements of each is a tremendous burden on the industry, adding costs that are simply passed on to investors.''); Comment Letter of Horton, Lantz & Low at 1 (May 24, 2005) (''[T]he lack of uniformity may result in increased costs associated with our retirement plan. Such higher costs could arise through higher plan administration costs * * * or higher mutual fund expenses.'').

[14] *See* Comment Letter of the Vanguard Group at 6 (June 1, 2005) (''[M]andatory redemption fee standards are not appropriate or necessary in the context of a voluntary fee. We believe that standardization under these circumstances would create significant disincentives to the adoption of redemption fees that might otherwise benefit a fund.'').

[15] ''Financial intermediary'' is defined in rule 22c–2(c)(1) as: (i) Any broker, dealer, bank, or other entity that holds securities of record issued by the fund, in nominee name; (ii) a unit investment trust or fund that invests in the fund in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)); and (iii) in the case of a participant-directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A)) or any entity that maintains the plan's participant records.

[16] Rule 22c–2(a)(2). Some commenters expressed concern about the ability of financial intermediaries to provide information to funds, in light of applicable privacy laws. *See, e.g.*, 15 U.S.C. 6801–09, 6821–27 (privacy provisions of Gramm-Leach-Bliley Act); Regulation S–P, 17 CFR part 248 (Commission rules implementing privacy provisions for funds, broker-dealers, and registered investment advisers). Under those laws, financial institutions such as funds, broker-dealers, and banks must provide a notice describing the institution's privacy policies and an opportunity for consumers to opt out of the sharing of information with nonaffiliated third parties. These privacy laws also contain important exceptions to the notice and opt-out requirements. Under the Commission's privacy rules, for example, these requirements do not apply to the disclosure of information that is ''necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes,'' which includes a disclosure that is ''[r]equired, or is a usual, appropriate, or acceptable method * * * [t]o carry out the transaction or the product or service business of which the transaction is a part * * *'' 17 CFR 248.14(a), (b)(2). *See also* 17 CFR 248.15(a)(7)(i) (notice and opt-out requirements not applicable to disclosure of information to comply with law). Financial privacy rules that are substantially identical to these rules apply to financial intermediaries other than broker-dealers, and contain comparable exceptions. *See, e.g.*, 12 CFR part 40 (rules applicable to national banks, adopted by the Comptroller of the Currency).

We believe that the disclosure of information under shareholder information agreements, and the fund's request and receipt of information under those agreements, are covered by these exceptions. We also note that financial institutions often state in their privacy policy notices that the institution makes ''disclosures to other nonaffiliated third parties as permitted by law.'' *See* 17 CFR 248.6(b). Therefore we believe it will not be necessary for intermediaries such as broker-dealers and banks to provide new privacy notices or opt-out opportunities to their customers, in order to comply with rule 22c–2, both as adopted and as we propose to amend it.

[17] One commenter expressed concern that the contract provision of rule 22c–2, requiring that agreements with intermediaries mandate the disclosure of shareholder information at the fund's request, conflicts with Commission rules governing proxy solicitations. *See* Comment Letter of the American Bankers Association (June 6, 2005). The Commission's proxy solicitation rules are set forth in Regulation 14A under the Exchange Act, 17 CFR 240.14A. The proxy rules govern the disclosure of information in the context of proxy solicitations. They do not prohibit banks, broker-dealers and other intermediaries from complying with agreements entered into pursuant to rule 22c–2.

[18] *See* proposed rule 22c–2(c)(5) (defining ''shareholder information agreement,'' which is discussed further below in Section II.B).

[19] As we noted when we adopted rule 22c–2 in 2005, a fund that receives shareholder information for a purpose permitted by the privacy rules under the exceptions to consumer notice and opt out requirements may not disclose that information for other purposes, such as marketing. *See* Adopting Release, *supra* note 4, at n.47 (''Our privacy rule prevents a fund that receives this [shareholder] information from using the information for its own marketing purposes, unless permitted under the intermediary's privacy policies. *See* 17 CFR 248.11(a) and 248.15(a)(7).'').

[20] *See, e.g.*, Comment Letter of OppenheimerFunds, Inc. (May 9, 2005). At the suggestion of several commenters, we broadened the definition of ''financial intermediary'' in the final rule.

name for other investors, it would therefore include, for example, a small business retirement plan that holds mutual fund shares on behalf of only a few employees. These commenters emphasized that the task of identifying these intermediaries, as well as negotiating agreements with them, will be costly and burdensome. The effect of the rule with respect to these small intermediaries was an unintended consequence of the rule, which we did not foresee when we modified the definition of 'financial intermediary' in response to the concerns that commenters raised with us.

We propose to revise rule 22c–2 to exclude from the definition of ''financial intermediary'' any intermediary that the fund treats as an individual investor for purposes of the fund's policies intended to eliminate or reduce dilution of the value of fund shares.[21] These types of policies include restrictions on frequent purchases and redemptions, as well as a fund's redemption fee program.[22] As a result, if a fund, for example, applies a redemption fee or exchange limits to transactions by a retirement *plan* (an intermediary) rather than to the purchases and redemptions of the *employees* in the plan, then the plan would not be considered a ''financial intermediary'' under the rule, and the fund would not be required to enter into an agreement with that plan.[23]

Our proposed approach, which was suggested by several commenters,[24] has advantages over the rule as initially adopted, while still achieving the goals of the initial rulemaking. First, when a fund places restrictions on transactions at the intermediary level (rather than the individual shareholder level), the fund is unlikely to need data about frequent trading by individual shareholders, because abusive short-term trading by the shareholders holding through the omnibus account would ordinarily trigger application of those policies to the intermediary's trades.[25] Therefore, transparency regarding underlying shareholder transactions executed through these accounts is unnecessary to achieve the goals of the rule. Second, our proposed approach would substantially eliminate the need for funds to devote resources to identifying intermediaries, because the funds will have already identified the relevant intermediaries in the course of administering their policies on short-term trading.

We request comment on this proposed amendment to the definition of financial intermediary.

- Should additional entities be excluded or included as financial intermediaries? Should funds be required to enter into agreements with any other types of entities? Should the definition of financial intermediary be revised in any other way to further the purposes of the rule or to reduce the cost of its implementation in a manner consistent with these purposes?[26] Should the rule contain additional (or different) exclusions?
- Is the proposed approach of allowing funds to determine which entities are financial intermediaries practical? Will this result in funds being more (or less) likely to impose redemption fees and restrictions on inappropriate short-term trading? Would the revised definition of financial intermediary create an incentive for funds to modify their market timing or redemption fee policies to treat more shareholders as individual investors?
- What are the costs to funds and financial intermediaries of the requirement to enter into agreements? How many new agreements will funds need to enter into with their intermediaries after the proposed revisions? How much will it cost to enter into a new agreement or modify an existing agreement to accommodate the requirement of rule 22c–2? Are there any other costs related to the agreement requirement?
- Should the definition of ''shareholder'' be revised?[27] For example, the definition excludes funds that rely on section 12(d)(1)(G) of the Act in order to invest in other funds in the same fund complex.[28] The Commission has proposed new rule 12d1–2 which, if adopted as proposed, would expand the ability of funds to rely on section 12(d)(1)(G). In light of this proposal, should the definition include these types of funds as shareholders (*i.e.*, should the exclusion be deleted)?[29] Should the definition provide for different circumstances in which these types of funds will not be considered shareholders? For example, should the definition be revised to limit the exclusion to funds that rely on section 12(d)(1)(G), but that do not rely on rule 12d1–2 (if adopted)?

B. Intermediary Chains

In some cases, a brokerage firm may hold its shares of a mutual fund not only on behalf of individual investors, but also on behalf of other intermediaries, such as pension plans or other broker-dealers.[30] Fund commenters said that they were uncertain how rule 22c–2 applied to these arrangements, and expressed concern how, as a practical matter, a

[21] Proposed rule 22c–2(c)(1)(iv).

[22] The rule excepts a fund from the requirement to enter into written agreements if, among other things, the fund ''affirmatively permits short-term trading of its securities.'' *See* rule 22c–2(b)(3).

[23] Proposed rule 22c–2(c)(1)(iv) would exclude from the definition of ''financial intermediary'' any person the fund treats as an individual for purposes of the fund's policies on eliminating or reducing dilution in the value of fund shares. If a fund has not established such policies and thus determined which persons it treats as individuals, this exclusion would not apply, and the fund would need to identify those shareholder accounts that are ''financial intermediaries.''

[24] *See, e.g.*, Comment Letter of the Securities Industry Association (May 9, 2005).

[25] Individual transactions (*e.g.*, by plan beneficiaries) in omnibus accounts (*e.g.*, self-directed defined contribution plans) trigger corresponding transactions by the omnibus accounts with funds in which the plan invests on behalf of plan beneficiaries. In other words, when a plan participant allocates an investment to Fund A, the plan must buy an equivalent number of shares of Fund A. If the plan has not identified itself to the fund as an intermediary (so that a fund will not apply its redemption fee or market timing policies to plan transactions) even harmless transactions by a number of participants (as well as market timing transactions) will cause the plan to effect transactions with the fund that will trigger application of a fund's redemption fee or market timing policies to the plan. Plans that do not identify themselves as intermediaries will likely either have very few participants and/or restrict their transactions so that transactions by participants do not trigger application of a redemption fee or violate fund market timing policies.

[26] *See, e.g.*, rule 17Ad–20 under the Securities Exchange Act of 1934 [17 CFR 240.17Ad–20] (defining ''securities intermediary'' as a registered ''clearing agency * * * or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others in its capacity as such.'').

[27] *See* rule 22c–2(c)(4).

[28] *See* Adopting Release, *supra* note 4, at n.55.

[29] *See* Fund of Funds Investments, Investment Company Act Release No. 26198 (Oct. 1, 2003) [68 FR 58226 (Oct. 8, 2003)] (proposing rule 12d1–2).

[30] One commenter questioned whether, in the context of insurance company separate accounts, a holder of a variable annuity contract is a ''shareholder'' of a mutual fund in which the insurance company separate account invests. See Comment Letter of American General Life Insurance Co. at 12 (May 9, 2005) (submitted on behalf of the company and certain affiliated companies). The term ''shareholder'' does encompass these investors. *See* rule 22c–2(c)(4) (defining ''shareholder'' to include, among others, ''a holder of interests in a fund or unit investment trust that has invested in the fund in reliance on section 12(d)(1)(E) of the Act''). We also noted, when we adopted rule 22c–2, that the term ''shareholder'' includes, among others, ''a holder of interests in * * * an insurance company separate account organized as a unit investment trust.'' Adopting Release, *supra* note 4, at n.55. Insurance company separate accounts are susceptible to many of the same short-term trading abuses as mutual funds, and the investor protection goals of rule 22c–2 apply equally to them as well. *See* In the Matter of Millennium Partners, L.P., Investment Advisers Act Release No. 2453, Administrative Proceeding File No. 3–12116 (Dec. 1, 2005) (ordering fees and penalties of $180 million and finding that Millennium Partners had, among other things, engaged in market timing trading through variable annuity contracts, employing a number of deceptive practices to avoid detection as a market timer).

fund could obtain shareholder information through multiple layers of intermediaries.[31] They pointed out that the rule did not specify, in such a ''chain of intermediaries,'' how the written agreement requirement would apply to any second tier (or additional tiers) of financial intermediaries. Two of these commenters recommended that the Commission revise the rule to limit the written agreement requirement to those entities that trade directly with the fund.[32] Two other commenters recommended that the rule mandate that a fund's contract with its intermediaries require them to provide information to the fund, and also require that those intermediaries contract with *other* intermediaries to agree to provide information to the fund, through chains of agreements.[33]

In light of these comments, we propose to revise the rule to provide that a fund must enter into a written agreement only with those financial intermediaries that submit orders to purchase or redeem shares directly to the fund, its principal underwriter or transfer agent, or a registered clearing agency [34] (''first-tier intermediaries'').[35] We are proposing to define this written agreement as a ''shareholder information agreement.'' [36] The proposed rule would include transfer agents and registered clearing agencies among the entities that may enter into shareholder information agreements with financial intermediaries on behalf of funds.[37] In practice, it is often the transfer agent that may have preexisting agreements with a fund's financial intermediaries, and to avoid potentially duplicative agreements or inefficiencies in the process, we propose to permit transfer agents to enter into agreements on behalf of the funds that they serve.[38]

The shareholder information agreement must obligate the first-tier intermediary to provide, promptly upon the fund's request, identification and transaction information for any shareholder accounts held directly with the first-tier intermediary.[39] If the first-tier intermediary maintains a shareholder account for another financial intermediary, the shareholder information agreement must obligate the first-tier intermediary to use its best efforts to identify, upon request by the fund, those accountholders who are themselves intermediaries, and obtain and forward (or have forwarded) the underlying shareholder identity and transaction information from those intermediaries farther down the chain (*i.e.*, second-or third-tier intermediaries, or ''indirect intermediaries''). If an intermediary that holds an account with a first-tier intermediary refuses to honor the request, the agreement must obligate the first-tier intermediary to prohibit, upon the fund's request, an indirect intermediary from purchasing additional shares of the fund through the first-tier intermediary.

These proposed rule amendments are designed to enable funds to request the information they need to enforce their market timing and redemption fee policies, while reducing the costs of complying with the rule.[40] The rule therefore relies upon the initiative of the fund to determine whether to request that first-tier intermediaries identify and collect information from specific indirect intermediaries, and to request that an indirect intermediary be restricted from further trading in fund shares due to its failure to provide requested information on shareholder transactions. We believe that this targeted approach would allow a fund to collect and analyze the most relevant information from intermediaries and enable it to efficiently and effectively enforce its short-term trading policies. This approach is also designed to permit a fund to look through multiple levels of intermediaries to reach relevant information about trading by ultimate shareholders.[41] These proposed amendments do not require first-tier intermediaries to enter into formalized information-sharing agreements with indirect intermediaries, although they would not prohibit any such agreements.

We request comment on how we propose to address chains of intermediaries.

- Would the proposed amendments result in funds receiving enough information from intermediaries to effectively address inappropriate short-term trading? Should the shareholder information agreement include any other requirements?
- Should the rule require that the agreement between the fund and each first-tier intermediary include a provision requiring first-tier intermediaries to enter into explicit agreements with all of their indirect intermediaries, or will the arrangements envisioned by the proposed rule be sufficient? Should the rule require funds to collect information from indirect intermediaries instead of having the shareholder information agreement require first-tier intermediaries to assume this role? Do the proposed amendments strike the proper balance of duties and costs between funds and intermediaries?
- Is there another approach that we should take in addressing the chains of intermediaries issue? For example, should the rule require that first-tier

[31] *See, e.g.*, Comment Letter of T. Rowe Price Associates, Inc. (May 24, 2005).

[32] *See id.*; Comment Letter of the ICI (May 9, 2005).

[33] *See* Comment Letter of American Society of Pension Professionals & Actuaries (May 9, 2005); Comment Letter of Charles Schwab & Co., Inc. (May 9, 2005).

[34] Currently, the National Securities Clearing Corporation (''NSCC'') is the only registered clearing agency for funds. A ''clearing agency'' is a person that acts as an intermediary in making payments or deliveries (or both) in connection with transactions in securities, or that provides facilities for comparing data with respect to the terms of securities transactions to reduce the number of settlements or the allocation of securities settlement responsibilities. *See* 15 U.S.C. 78c(a)(23)(A). A clearing agency is a self-regulatory organization, and its rules of operation are subject to approval by the appropriate federal regulatory agency. *See* 15 U.S.C. 78c(a)(26), 78s(b).

[35] Proposed amendment to rule 22c–2(a)(2). We understand that retirement plan administrators and other persons that maintain the plan's participant records typically submit transactions in fund shares to the fund or to its transfer agent, principal underwriter, or to a registered clearing agency. The rule we adopted last spring specifically includes these administrators and recordkeepers within the definition of a ''financial intermediary.'' *See* rule 22c–2(c)(1)(iii).

[36] Proposed rule 22c–2(c)(5). The agreement may be part of another contract or agreement, such as a distribution agreement.

[37] If a transfer agent or clearing agency enters into an agreement on behalf of the fund, the agreement must require the financial intermediary to provide the requested information to the fund upon the fund's request, as provided in the definition of shareholder information agreement.

[38] We have also included registered clearing agencies as an entity that may enter into agreements on behalf of funds. This amendment could allow funds and intermediaries to utilize the registered clearing agency as a central agreement repository, if such an arrangement is feasible.

[39] As discussed further below, if a fund does not enter into a shareholder information agreement with an intermediary, it must restrict future purchases of fund shares by the intermediary. *See infra* Section II.C.

[40] A number of intermediaries have already developed or are developing systems that will allow for transmission of this information. For example, Charles Schwab & Co. has developed a system that allows fund companies to view and download information regarding the identity and transaction history of accountholders that trade through Schwab. Julie Segal, *Schwab Makes Omnibus Data Available to Fund Companies*, Fund Action (Dec. 2, 2005). *See also* Tom Leswing, *SunGard Creating Redemption Fee Rule Service*, Ignites (Sept. 30, 2005) (discussing SunGard's development of a similar system allowing funds to impose redemption fees and access underlying shareholder identity and transaction information through omnibus accounts). We also understand that the NSCC is developing enhancements to its Fund/SERV order processing and clearing systems that should allow members to request and transmit shareholder identity and transaction information.

[41] We anticipate that intermediaries may use a variety of arrangements with indirect intermediaries to ensure that the requested information is provided to the fund, ranging from formalized contracts to informal communications in response to a specific fund inquiry.

intermediaries collect information only from second-tier intermediaries, without addressing the need for further information from more distant intermediaries? Would this approach allow investors to mask short-term trading activity by acting though multiple layers of intermediaries?

• What steps are funds and intermediaries already taking to share information? Are there systems in place (or in development) that could be used to reduce the costs of collecting and sharing this information?

• What are the costs of collecting shareholder information from intermediaries? How often do funds anticipate requesting shareholder information from intermediaries? How much would it cost to establish and maintain systems to collect and transmit the shareholder information between funds and intermediaries? What would it cost for first-tier intermediaries to ensure that funds receive the shareholder information from indirect intermediaries and restrict indirect intermediaries' trading upon the fund's request?

• Under the proposed amendments, a fund could enter into a shareholder information agreement through its principal underwriter, transfer agent, or registered clearing agency. Should the rule include any other types of entities?

C. Effect of Lacking an Agreement

Some commenters questioned the effect under the rule of a fund's failure (or inability) to obtain agreements with *all* of its intermediaries.[42] The rule could be interpreted to mean that in such a circumstance, the fund would be precluded from redeeming the shares of any of its shareholders within seven days of purchase.[43] In order to prevent a fund's lack of agreements with certain intermediaries from affecting the redeemability of shares that investors own through other intermediaries, we propose to revise the rule to provide that, if a fund does not have an agreement with a particular intermediary, the fund must thereafter prohibit the intermediary from purchasing, on behalf of itself or other persons, securities issued by the fund.[44] We intend this change to focus the remedy (prohibition of future purchases) on the particular intermediary that fails to execute an agreement with the fund.

We request comment on the proposed amendment clarifying the effect of a fund's lacking a shareholder information agreement with a financial intermediary.

• Instead of restricting any further *purchases* by a financial intermediary that does not have an agreement with a fund, would precluding an intermediary without an agreement from *redeeming* purchased shares within seven days serve the purposes of the rulemaking? Would this alternative preclusion on redemption within seven days effectively encourage intermediaries to enter into agreements with funds? Would this alternative of precluding redemption within seven days by intermediaries without agreements impose hardships on shareholders in financial emergencies, or implicate other shareholder redemption issues?

• Is there another approach available to us that would further the goals of this rulemaking?

III. Compliance Date

When the Commission adopted rule 22c–2 in March 2005, we established a compliance date of October 16, 2006. Commenters pointed out that they would need significant time to revise agreements with intermediaries and change their systems to accommodate the transmission and receipt of trading information. That compliance date remains in effect, although we may revise or extend that compliance date if and when we adopt the amendments we are proposing today. We request comment on whether additional time would be needed to comply with the amendments.

IV. Current Industry Efforts Regarding Shareholder Information

We understand that representatives of mutual funds, transfer agents, and broker-dealers are currently engaged in an effort, in order to implement the information-sharing provisions of rule 22c–2, to develop standardized contractual terms and information exchange protocols.[45] We support the work of the representatives in developing these standards, and urge others involved with the distribution of mutual fund shares to become involved in this effort. We direct our staff to provide appropriate assistance.

V. Ongoing Monitoring

As discussed above, this release addresses only certain technical issues that have arisen to date. We intend, however, to monitor implementation of the rule, and accordingly we are interested in hearing on an ongoing basis from funds with experience complying with the rule, and other interested parties, about any further implementation issues or developments. In this regard, we encourage fund shareholders, funds and other interested parties to submit feedback as they develop experience with the rule. For example, we understand that the industry is developing a number of initiatives to streamline the flow of shareholder data between funds and intermediaries. If those initiatives are implemented, we would be interested in knowing whether they have assisted funds in complying with the rule. We also would be interested in hearing feedback with respect to issues such as the following:

• How have the required board findings with respect to the necessity and propriety of a redemption fee worked in practice?

• How has the rule affected the use of redemption fees by funds?

• How has the rule affected the level of redemption fees and the percentage of funds imposing redemption fees?

• How has the rule affected the length of redemption periods?

• Has the rule resulted in any unexpected benefits or adverse consequences for fund shareholders?

Feedback may be provided to the Commission by any of the following methods:

Electronic Submissions

• Use the Commission's Internet submission form at *http://www.sec.gov/rules/proposed.shtml*; or

• Send an e-mail to *rule-comment@sec.gov*. Please include File Number 4–512 on the subject line.

Paper Submissions

• Send paper submissions in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 4–512. This file number should be included on the subject line if e-mail is used. To help us process and review your submissions more efficiently, please use only one method. The Commission will post all submissions on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Submissions are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All submissions received will be posted without change;

[42] *See, e.g.,*. Comment Letter of T. Rowe Price Associates, Inc. (May 24, 2005).

[43] Comment Letter of OppenheimerFunds, Inc. (May 9, 2005).

[44] Proposed rule 22c–2(a)(2)(ii).

[45] *See* Comment Letter of the Securities Industry Association (May 9, 2005) (noting that the SIA has been ''exploring with ICI the possible development of prototype contractual terms and approved methodologies for transmission of fund transactions data between intermediaries and funds'').

we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

VI. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. As discussed above, the amendments we are proposing today would (i) limit the types of persons with which funds must negotiate agreements, (ii) address the rule's application to chains of intermediaries, and (iii) clarify the effect of a fund's failure to obtain an agreement with any of its intermediaries. These proposed amendments are designed to respond to concerns that commenters identified during the course of implementing rule 22c–2. We believe that the changes would result in substantial cost savings to funds, financial intermediaries, and investors, and provide clarification of the rule's requirements.

A. Benefits

We anticipate that funds, financial intermediaries, and investors will benefit from the proposed amendments to rule 22c–2. As discussed more fully in the Adopting Release we issued in 2005, rule 22c–2 is designed to allow a fund to deter, and to provide the fund and its shareholders reimbursement for the costs of, short-term trading in fund shares.[46] The general benefits of rule 22c–2 therefore include the deterrence of short-term trading, in which short-term traders cause the fund to incur expenses that are ultimately borne by the long-term shareholders in a fund. Short-term trading can disrupt funds' stated portfolio management strategies, increase funds' transaction costs, require the maintenance of elevated cash positions (thereby reducing funds' returns), and dilute the value of fund shares held by long-term shareholders. One benefit of discouraging short-term trading is to increase the confidence of long-term investors in the capital markets as a whole, and in funds in particular. Rule 22c–2 is also designed to foster greater cooperation between funds and their intermediaries, and may result in improved communication and transparency of information between them.

Rule 22c–2 explicitly allows funds to adopt redemption fees of up to two percent as a means of recouping costs associated with short-term trading in fund shares. If a fund's board adopts a redemption fee, the resulting revenues will be returned to the fund and its investors. The revenue that funds and investors receive from redemption fees reimburses long-term shareholders for some, if not all, of the costs caused by short-term traders. Many of the costs associated with rule 22c–2 discussed below are incidental to this purpose of better enabling funds to collect redemption fees from short-term traders in order to reimburse investors for any dilution of the fund. In many cases, the revenue received from redemption fee proceeds may be enough to allow funds to recoup both the direct and indirect costs associated with short-term trading. For example, based on conversations with fund representatives, we understand that one large fund complex collected approximately $34 million in redemption fee revenue in 2004. Funds that choose not to adopt redemption fees would not collect these fees, but would continue to realize the other benefits discussed below.

The amendments to rule 22c–2 that we are proposing today will likely result in additional benefits to funds, financial intermediaries, and investors. As discussed in the previous sections of this Release, some commenters argued that the rule's definition of ''financial intermediary'' was too broad because it would have required funds to identify and enter into agreements with a number of intermediaries that may not pose a significant short-term trading risk to funds, and may have imposed unnecessary costs to market participants.[47] For example, one large fund complex asserted that, under the rule as adopted, identifying their ''financial intermediaries'' could cost that fund complex $8.5 million or more.[48] As discussed above, our proposed amendments would modify the definition of financial intermediary to exclude entities that a fund treats as an individual investor for purposes of the fund's policies on market timing or frequent trading. We believe that these amendments would reduce the burden on funds of identifying those entities that might have qualified as financial intermediaries under the rule as adopted, because a fund should already know which entities it treats as intermediaries for purposes of its policies on market timing or frequent trading. As further discussed in Section VIII below, for purposes of the Paperwork Reduction Act we have estimated that, if these amendments are adopted, identifying the intermediaries with which a fund complex must enter into agreements may take the average fund complex a total of 250 hours of a service representative's time, at a cost of $40 per hour,[49] for a total burden to all funds of 225,000 hours, at a total cost of $9 million. These amendments would likely provide a significant benefit because they should reduce the costs associated with the intermediary identification process.

By enabling funds to forego the cost of entering into agreements with omnibus accountholders that they treat as individual investors, we anticipate that the large majority of small omnibus accountholders would now fall outside the shareholder information agreement provisions of the rule. This would likely result in significant cost and time savings to funds and financial intermediaries through reduction of the expenses associated with these agreements. The reduction of these costs also may benefit fund investors and fund advisers, to the extent that these costs would have been passed on to them. We estimate that this would significantly reduce the burden on many entities that would otherwise qualify as intermediaries under the rule, since the excluded entities would no longer need to enter into shareholder information-sharing agreements, or develop and maintain systems to provide the relevant information to funds.

Commenters were also concerned that the rule as adopted might have required funds to enter into agreements with intermediaries that hold fund shares in the name of other intermediaries (a ''chain of intermediaries''), potentially resulting in a fund having to enter into agreements with intermediaries with which it may not have a direct relationship (*i.e.*, indirect intermediaries).[50] The proposed amendments would further clarify and define the operation of the rule with respect to intermediaries that invest through other intermediaries. As

[46] *See* Adopting Release, *supra* note 4, at Section IV.A.

[47] Comment Letter of the ICI at 3 (May 9, 2005). The ICI stated in its comment letter that, under the rule as adopted last March, three large fund complexes alone would have to evaluate 6.5 million accounts that are ''not in the name of a natural person and thus could be held as an intermediary for purposes of the rule'' and might have to enter into agreements with a significant portion of those accounts that are held in nominee name. *Id.* at 3. The ICI noted that many of these accounts are likely associated with small retirement plans, small businesses, trusts, bank nominees and other entities that are unlike typical financial intermediaries such as broker-dealers. It added that funds typically do not have agreements with such small entities, other than agreements incidental to the opening of an account.

[48] This estimate is based on telephone conversations with representatives of that fund complex.

[49] *See infra* note 69.

[50] *See* Comment Letter of T. Rowe Price Associates, Inc. at 2 (May 24, 2005); Comment Letter of OppenheimerFunds, Inc. at 3 (May 9, 2005).

proposed, the amendments to rule 22c–2 would define the term ''shareholder information agreement,'' and provide that funds need only enter into shareholder information agreements with intermediaries that directly submit orders to the fund, its principal underwriter, transfer agent, or to a registered clearing agency. Accordingly, funds would not need to enter into agreements with indirect intermediaries and may incur lower systems development costs related to the collection of underlying shareholder information, thereby reducing the costs of compliance.

Under the proposed amendments, a first-tier intermediary, in its agreement with the fund, must agree, upon further request by the fund, to: (i) Provide the fund with the underlying shareholder identification and transaction information of any other intermediary that trades through the first-tier intermediary (*i.e.*, indirect intermediary); or (ii) prohibit the indirect intermediary from purchasing, on behalf of itself or others, securities issued by the fund. This approach is designed to preserve the investor protection goals of the rule by ensuring that funds have the ability to identify short-term traders that may attempt to evade the reach of the rule by trading through chains of financial intermediaries. We considered not requiring the collection of shareholder information from indirect intermediaries at all, but are concerned that providing such an exemption might encourage abusive short-term traders to conduct their activities through another intermediary in order to avoid detection by the fund.

By defining minimum standards for what must be included in these shareholder information agreements, we have attempted to balance the need for funds to acquire shareholder information from indirect intermediaries who trade in fund shares, with practical concerns regarding the difficulty that funds might face in identifying these intermediaries and entering into agreements with them. Because the intermediary that trades directly with the fund already has a relationship with second-tier intermediaries, (and is likely to have a closer relationship than the fund to any intermediary that is farther down the ''chain'') the first-tier intermediary appears to be in the best position to arrange for the provision of information to the fund regarding the transactions of shareholders trading through its indirect intermediaries. By providing a definition of the term ''shareholder information agreement,'' the amended rule would more clearly explain the balance of duties and obligations between funds and financial intermediaries. Because first-tier intermediaries may already have access to the shareholder transaction and identification information of their indirect intermediaries, they will likely be able to provide this information to funds at a minimal cost, especially compared to the significant costs that funds would incur if they were required to collect the same information from indirect intermediaries themselves. Although first-tier intermediaries may incur some costs in collecting and gathering this information from indirect intermediaries, there is a benefit in having the entity that has the easiest access to the relevant information have the responsibility for arranging for its delivery to funds.

As discussed in the previous sections, these proposed amendments clarify the result if a fund lacks an agreement with a particular intermediary. In such a situation, the fund may continue to redeem securities within seven calendar days, but it must prohibit that financial intermediary from purchasing fund shares, on behalf of itself or any other person. Some commenters had stated that the rule, as adopted in 2005, could be interpreted to require a different approach to these situations.[51] The proposed amendments would provide the benefit of certainty regarding the duties of funds and financial intermediaries under the rule, and clarity concerning the intent of the Commission, without imposing additional costs.

B. Costs

Many commenters expressed concerns about the costs of rule 22c–2 as we adopted it in 2005. As discussed above, we anticipate that the proposed amendments would allow funds, financial intermediaries, and investors to incur significantly reduced costs under the rule as we propose to amend it, compared to the rule as it was originally adopted. Although these proposed amendments would reduce many of the costs of the rule, they should nonetheless maintain the investor protections afforded by the rule.

The primary result of these proposed amendments would be to reduce the number of financial intermediaries with which funds must enter into shareholder information agreements. This should reduce costs to all participants by allowing funds to enter into shareholder information agreements only with those intermediaries that hold omnibus accounts that are most likely to trade fund shares frequently. The rule's investor protections will be maintained because funds will continue to monitor the short-term trading activity of the rest of the fund's omnibus accounts as if they were individual investors in the fund, according to the fund's policies on short-term trading.

A number of costs are associated with the shareholder information agreement provision of the rule, both as adopted and as we propose to revise it. These costs are incurred by both funds and financial intermediaries, and include: (i) Identifying those accounts that qualify as financial intermediaries; (ii) modifying existing agreements with intermediaries to cover the shareholder collection requirements of the rule or, if no agreement exists, entering into a new agreement; (iii) developing systems that assemble and transmit shareholder information between funds and intermediaries; and (iv) maintaining and monitoring the systems and the shareholder information collected on an ongoing basis. The specific costs incurred by each fund and financial intermediary may vary widely. Among other factors, these costs will vary based upon the size of each entity, the number of accounts handled, the number of shareholder agreements that must be modified or entered into, the size and complexity of the systems developed to handle the information, whether or not a fund determines that it needs a redemption fee, whether the fund has policies on the intermediaries it treats as individual investors, and the specific policies on short-term trading that a fund has adopted.

The proposed amendments would reduce the number of entities that would be considered financial intermediaries under the rule. Commenters raised concerns about the costs of identifying which accountholders are financial intermediaries, but did not identify specific costs related to this review.[52] In any event, the costs related to this

[51] *See* Comment Letter of the ICI at 4 (May 9, 2005).

[52] As discussed above, the ICI noted that, between just three large fund complexes, 6.5 million accounts may need to be reviewed, and estimated that the total number of accounts which would be evaluated by all funds could be in the ''tens of millions.'' Comment Letter of the ICI at 3 (May 9, 2005). OppenheimerFunds noted that, although it has more than 7.5 million shareholder accounts in its records, 137,000 or fewer of those accounts may qualify as financial intermediaries under the rule as adopted last spring. *See* Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005). Neither commenter estimated the costs of performing this review.

review would be greatly reduced under the rule as we propose to revise it, because we expect that a fund will generally already have identified those accountholders that it does not treat as an individual investor for purposes of its restrictions on short-term trading. As discussed above in the benefits section, for purposes of the Paperwork Reduction Act, we have estimated that completion of this identification process will cost all funds a total of approximately $9 million.

We received a few comments regarding the number of accounts maintained by funds that qualify as financial intermediaries.[53] Commenters indicated that revising the rule in the manner that we are proposing today would significantly reduce the costs of entering into or modifying these agreements, as well as the costs of developing, maintaining and monitoring the systems that will collect the shareholder information related to these agreements for funds.[54] Omnibus accountholders that previously would have qualified as financial intermediaries are also likely to realize substantial savings under the amended rule. When an omnibus accountholder is treated as an individual investor (or does not trade directly with the fund), such an omnibus account will no longer be treated as a financial intermediary and will not incur the costs of entering into or modifying agreements with that fund. There will also no longer be the start-up and ongoing costs of developing and maintaining shareholder information-sharing systems for those accountholders.

We received a few comments regarding the costs of modifying or entering into shareholder information agreements. The only commenter that gave specific numbers indicated that it would take approximately four hours to modify and/or enter into, follow-up on, and maintain an agreement on its systems for each account identified as a financial intermediary.[55] The same commenter indicated that it may have as many as 137,000 accounts that might qualify as financial intermediaries under the rule as adopted. We anticipate that if we adopt the proposed revisions, the large majority of the omnibus accountholders that would have qualified as financial intermediaries under the rule as adopted, would instead be treated as individual investors by funds, and therefore no new agreements would be required. Based on conversations with fund representatives, we anticipate that in most cases complying with the amended rule will require a very limited number of new agreements between funds and intermediaries (in many cases virtually no new agreements would be required). We understand that the number of existing agreements that funds have with their intermediaries can vary greatly, from less than 10 agreements for a small direct-sold fund, to more than 3000 for a very large fund sold through various channels. Although funds will still need to modify the existing agreements that they have with their intermediaries (*i.e.*, distribution agreements), we believe that these proposed revisions would greatly reduce or eliminate the need for most funds to identify and negotiate new agreements. Funds are also likely to incur lower costs when modifying existing agreements than when entering into new agreements, and the actual hours required to modify an existing agreement thus may be significantly less than the four hour figure suggested by the commenter.[56] Accordingly, under the cost estimates provided by this commenter, the cost reduction that may result if the proposed amendments were adopted for a fund complex in a similar position as the commenter could be 536,000 hours.[57]

Based on further information that our staff has obtained, for purposes of the Paperwork Reduction Act as discussed below, we have estimated that it will cost all funds and financial intermediaries a total of approximately $53,550,000 to enter into and/or modify the agreements required under the amended rule.[58] This represents a significant cost reduction from the most recent estimates provided to us in response to the rule's adoption.[59]

There will also be some costs related to the amendments we are proposing to make in the context of chains of intermediaries. By clearly defining the duties that a fund's agreement must impose on intermediaries in the ''chain of intermediaries'' context, the proposed rule amendments may result in first-tier intermediaries incurring some costs that might otherwise have been borne by funds. These may include costs related to negotiating agreements (if necessary) with indirect intermediaries, processing requests from funds to investigate accounts, costs related to collecting and providing the underlying shareholder information to funds from the indirect intermediaries and restricting further trading by indirect intermediaries if the fund requests it. We believe that first-tier intermediaries are in a better position than funds to fulfill these obligations. Unlike funds, first-tier intermediaries have a direct relationship with second-tier intermediaries (and may be in a better position than funds to collect information from other indirect intermediaries), and will thus be able to identify, communicate with, and collect information from these indirect intermediaries at a lower cost than if funds were to conduct such activities. First-tier intermediaries are also in a better position than funds to identify and gather shareholder

[53] OppenheimerFunds estimated that it has 137,000 omnibus accounts that might qualify as financial intermediaries, USAA Investment Management Company stated that it has ''thousands'' of these accounts, and T. Rowe Price estimated 1.3 million accounts that are not registered as natural persons. *See* Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005); Comment Letter of USAA Investment Management Company at 2 (May 9, 2005); Comment Letter of T. Rowe Price Associates, Inc. at 2 (May 24, 2005).

[54] *See* Comment Letter of USAA Investment Management Company at 2 (May 9, 2005); Comment Letter of the ICI at 3 (May 9, 2005).

[55] *See* Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005).

[56] *See* Section VIII below for a discussion, in the context of the Paperwork Reduction Act, of some of the estimated costs of the shareholder information agreement and information-sharing system development and operations aspects of the rule as we propose to amend it.

[57] *See* Comment Letter of OppenheimerFunds, Inc. (May 9, 2005). This estimate is based on the following calculations: 137,000 potential accounts times 4 hours per account equals 548,000 potential hours. However, the proposed amendments might eliminate the burden of reviewing and modifying those 137,000 potential accounts, and could limit the burden to a far reduced number, perhaps 3000 agreements for a very large fund. (3000 agreements to be modified times 4 hours equals 12,000 hours.) Instead of potentially incurring 548,000 hours complying with the agreement portion of the rule, a similar fund might incur 12,000 hours in modifying its existing agreements, for a savings of 536,000 hours. (548,000 potential hours minus 12,000 hours equals 536,000 hours saved).

[58] *See infra* Section VIII.

[59] However, this revised estimate is an increase over the amount we estimated in the Adopting Release ($3,353,279) for funds and intermediaries to enter into information-sharing agreements. *See* Adopting Release, *supra* note 4, at n.108. In response to our request for comment on any aspect of the rule's implementation, we received new information and updated estimates that noted that the cost of entering into agreements for funds and intermediaries would be significantly higher than the estimate included in the Adopting Release. After reviewing the comments we received in response to the Adopting Release, as well as other information received from fund representatives, we now estimate that on average, a fund complex might incur $250,000 or more in expenses related to entering into or modifying the agreements required under the rule as adopted. With approximately 900 fund complexes currently operating, we now estimate that the agreement portion of the rule as adopted could potentially cost all funds a total of approximately $225,000,000. Despite the increase in estimated costs for entering into agreements that we have included here over the cost estimates included in the Adopting Release, we anticipate that the proposed amendments would reduce the costs of the agreement portion of the rule as adopted by approximately $171,450,000 ($225,000,000 (updated cost estimate) minus $53,550,000 (cost estimate after proposed amendments) equals $171,450,000 (total potential cost reduction)).

information from more distant indirect intermediaries because of their relationships with second-tier intermediaries.

As further discussed in connection with the Paperwork Reduction Act, we have estimated that the costs of entering into arrangements between first-tier and more indirect intermediaries would be approximately $63 million.[60] We anticipate that intermediaries will generally use the same systems that they use to provide the required underlying shareholder identity and transaction information directly to funds to process the information that first-tier intermediaries will forward (or have forwarded) to funds from indirect intermediaries, thus resulting in significant cost efficiencies.

Funds and intermediaries may also incur some costs related to drafting or revising terms for the agreements required by rule 22c–2. We have been informed that industry representatives are working together to develop a uniform set of model terms, and anticipate that such model terms may significantly reduce the costs related to developing individualized agreement terms for each fund and intermediary. As further discussed in Section VIII, for purposes of the Paperwork Reduction Act, we estimate that a typical fund complex will incur a total of 5 hours of legal time at $300 per hour in drafting these agreement terms, for a total of 4500 hours for all 900 fund complexes at a total cost of $1,350,000.

We understand that several service providers are developing systems to accommodate the transmission and receipt of transaction information between funds and intermediaries pursuant to contracts negotiated to comply with rule 22c–2.[61] At least one of these organizations is revising the infrastructure that it already has in place, in order to facilitate the communication of fund trades and other ''back office'' information between funds and financial intermediaries, including the information required under the rule. Based on information from industry representatives, we understand that, with the exception of some smaller to mid-sized funds and intermediaries, the large majority of funds and intermediaries currently use the organization's existing infrastructure to process fund trades. In addition, some funds and intermediaries may develop their own competing or complementary information-sharing systems.

As further described in connection with the Paperwork Reduction Act, we estimate that all funds will incur a total of approximately $47,500,000 in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and receive the required identity and transaction information from intermediaries, and a total of $21,515,000 each year thereafter in operation costs related to the transmission and receipt of the information.[62] We further estimate that financial intermediaries may incur $227,500,000 in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and transmit the required identity and transaction information to funds and from other intermediaries, and a total of $140,000,000 each year thereafter in operation costs related to the transmission and receipt of the information.

For the reasons discussed above, we anticipate that the proposed amendments would not create additional costs beyond the rule as adopted. In fact, we anticipate that the amendments may significantly reduce costs to most market participants.[63]

C. Request for Comments

We request comment on the potential costs and benefits of the proposed amendments to rule 22c–2. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[64] we also request information regarding the potential impact of the proposals on the U.S. economy on an annual basis.

VII. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. As discussed in the Cost-Benefit Analysis above, the proposed amendments to rule 22c–2 are designed to reduce the burdens of the rule as adopted, while maintaining its investor protections. Funds would no longer be required to incur the expense of modifying or entering into agreements with omnibus accounts that they already effectively monitor by treating as individual investors, and would not need to enter into agreements with intermediaries that do not trade directly with the fund. The proposed amendments would promote efficiency in the capital markets by enabling funds to focus their short-term trading deterrence efforts on those omnibus accounts that could be used to disguise this type of trading. The amendments would also promote efficiency by reducing the number of omnibus accountholders that would otherwise incur the expenses of entering into agreements, and of establishing and maintaining systems for collecting and sharing shareholder information.

We do not anticipate that the proposed amendments would harm competition. They would apply to all market participants and, as discussed in the Cost-Benefit Analysis above, serve to reduce cost burdens for large funds as well as small funds.[65] Some commenters expressed concern that the rule as adopted may disproportionately burden small intermediaries, and thus hinder competition. We anticipate that under the proposed amendments, most omnibus accounts that are treated by the fund as individual investors would be small intermediaries. By excluding these small intermediaries from the rule's requirements, the amendments would serve to alleviate potential anti-competitive effects on small intermediaries.

Even if the proposed amendments are adopted, the competitive pressure of marketing funds, especially smaller funds, coupled with the costs of imposing redemption fees in omnibus accounts, may deter some funds from imposing redemption fees. Intermediaries may use their market power to prevent funds from applying the fees, or provide incentives for fund groups to waive fees. However, by reducing the costs of imposing redemption fees for both funds and intermediaries, we believe that any such anti-competitive effects will likely be reduced.

We anticipate that the proposed amendments will indirectly foster capital formation by continuing to bolster investor confidence, because the rule is designed to permit funds to deter, and recoup the costs of, abusive short-term trading. To the extent that the rule enhances investor confidence in funds, investors are more likely to make assets available through intermediaries for investment in the capital markets. The proposed amendments may also

[60] *See infra* Section VIII.

[61] *See supra* note 40.

[62] *See infra* Section VIII.

[63] *See infra* note 105.

[64] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[65] *See supra* Section IV.

foster capital formation by reducing the costs of the rule for funds and intermediaries.

We request comments on whether the proposed rule amendments, if adopted, would promote efficiency, competition, and capital formation. Will the proposed amendments or their resulting costs materially affect the efficiency, competition, and capital formation of funds and other businesses? Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Paperwork Reduction Act

As discussed in the release in which we adopted rule 22c–2,[66] the rule includes ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[67] The Commission is submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information requirements associated with the rule is ''Rule 22c–2 under the Investment Company Act of 1940, Redemption fees for redeemable securities.'' 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 control number.

The proposed amendments would reduce the burdens associated with the collections of information required by the rule, and would not create new collections of information. The proposed amendments should reduce the number of entities affected by the rule as adopted. We are therefore proposing to revise our previous burden estimates under the Paperwork Reduction Act to reflect (i) new cost and time burden information that we have received from market participants, and (ii) the revised number of entities that would be affected by the amended rule.

This revised Paperwork Reduction Act section contains a number of new cost and hour estimates that are significantly altered from the estimates made in the Adopting Release. Some of these estimates are based on different methods, and different sources, from those in the Adopting Release. Therefore there is not a strict comparability between the estimates here and those made in the Adopting Release. These cost estimates, hourly rate estimates, and the methodology used to make these proposed estimates are based on comments we received in response to the Adopting Release, and on information received from funds, intermediaries, and other market participants during conversations conducted while preparing these proposed amendments. We request comment on any aspect of our staff's estimates regarding the costs of complying with the rule as we propose to amend it.

The amendments we are proposing to rule 22c–2 include two distinct ''collections of information'' for purposes of the Paperwork Reduction Act. The first is related to shareholder information agreements, including the costs and time related to identifying the relevant intermediaries, drafting the agreements, negotiating new agreements or modifying existing ones, and maintaining the agreements in an easily accessible place. The second is related to the costs and time related to developing, maintaining, and operating the systems to collect, transmit, and receive the information required under the shareholder information agreements.[68]

Both collections of information are mandatory for funds that choose to redeem shares within seven days of purchase. These funds will use the information collected to ensure that shareholders comply with the fund's policies on abusive short-term trading of fund shares. There is a six year recordkeeping retention requirement for the shareholder information agreements required under the rule.

A. Shareholder Information Agreements

The Commission staff anticipates that most shareholder information agreements will be entered into at the fund complex level, and estimates that there are approximately 900 fund complexes. The Commission staff understands that the number of intermediaries that hold fund shares can vary for each fund complex, from less than 10 for some fund complexes to more than 3000 for others. Based on conversations with fund and financial intermediary representatives, our staff estimates that, on average, under the revised definition of financial intermediary, each fund complex would have approximately 300 financial intermediaries. Industry representatives have informed us that funds would already know and have previously identified the majority of their intermediaries. Therefore funds should expend a limited amount of time and costs related to the identification of such intermediaries. Our staff estimates that identifying the intermediaries with which a fund complex must enter into agreements may take the average fund complex 250 hours of a service representative's time at a cost of $40 per hour,[69] for a total of 225,000 hours at a cost of $9,000,000.[70] Our staff estimates that for a fund complex to prepare the model agreement, or provisions modifying a preexisting agreement, between the fund and the intermediaries, it will require a total of 5 hours of legal time at $300 per hour, for a total of 4500 hours[71] at a total cost of $1,350,000.

The Commission staff estimates that for a fund complex to enter into or modify a shareholder information agreement with each existing intermediary, it would require a total one-time expenditure of approximately 2.5 hours of fund time and 1.5 hours of intermediary time for each agreement, for a total of 4 hours expended per agreement.[72] Therefore, for an average fund complex to enter into shareholder agreements, the fund complex and its intermediaries may expend approximately 1200 hours at a cost of $48,000,[73] and all fund complexes and intermediaries may incur a total one-time burden of 1,080,000 hours at a cost of $43,200,000.[74] The Commission staff understands that there are efforts under way (including an industry task force

[66] *See* Adopting Release, *supra* note 4, at Section VI.

[67] 44 U.S.C. 3501–3520.

[68] This second collection of information does not include potential costs or time that funds or intermediaries might choose to incur in analyzing or using the provided information.

[69] The title and hourly cost of the person performing the intermediary identification and entering into agreements may vary depending on the fund or financial intermediary. This $40 per hour cost is an average estimate for the hourly cost of employing the person doing the relevant work, derived from conversations with industry representatives.

[70] This estimate is based on the following calculations: 250 hours times 900 fund complexes equals 225,000 hours, and 225,000 hours times $40 equals $9,000,000.

[71] This estimate is based on the following calculation: 5 hours times 900 fund complexes equals 4500 hours of legal time.

[72] The 4 hour figure represents time incurred by both the fund and the financial intermediary for each agreement. The Commission staff estimates that this 4 hour figure is comprised of approximately 2.5 hours of a fund service representative's time at $40 per hour and 1.5 hours of an intermediary representative's time at $40 per hour.

[73] This estimate is based on the following calculations: 4 hours times 300 intermediaries equals 1200 hours; and 1200 hours times $40 dollars per hour equals $48,000.

[74] This estimate is based on the following calculations: 1200 hours times 900 fund complexes equals 1,080,000 hours; and 1,080,000 hours times $40 per hour equals $43,200,000.

devoted to the project) to produce standardized shareholder information-sharing model agreements and terms. If fruitful, these efforts may reduce the costs associated with the agreement provision of the rule for both funds and intermediaries.[75] Finally, the Commission staff does not anticipate that funds or intermediaries will incur any new costs in maintaining these agreements in an easily accessible place, because such maintenance is already done as a matter of course.

The staff therefore estimates that, for purposes of the Paperwork Reduction Act, the shareholder information agreement provision of the rule as proposed to be revised would require a total of 1,309,500 hours at a total cost of $53,550,000.[76]

B. Information-Sharing

Some funds and intermediaries would incur the system development costs discussed in this section, but many would not because they already process all of their trades on a fully disclosed basis, use a third party administrator to handle their back office work,[77] or already have systems in place that allow intermediaries to transmit the shareholder identity and transaction information to funds. Other funds and intermediaries may have special circumstances that could increase the costs they may face in developing and operating systems to comply with the rule. The estimates below represent the Commission staff's understanding of the average costs that might be encountered by a typical fund complex or intermediary in complying with the information-sharing aspect of the rule as proposed to be amended.

1. Funds

The Commission staff understands that various organizations have developed, or are in the process of developing, enhancements to their systems that will allow funds and intermediaries to share the information required by the rule without developing or maintaining systems of their own.[78] Our staff anticipates that most funds and intermediaries will use these systems, and will generally make minor changes to their back office systems to comply with the rule requirements and to match their systems to those of the service providers. Our staff estimates that most funds could adapt their in-house systems to utilize these service providers' systems at a one-time cost of approximately $10,000 or less.[79] In general, our staff understands that fees averaging 25 cents for every 100 account transactions requested may be charged when funds request information from intermediaries, and in response, intermediaries transmit the information back to funds.

As an example of the cost of using these services, if a fund complex requests information for 100,000 transactions each week, then it would incur costs of $250 each week, or $13,000 a year.[80] Our staff estimates that approximately 475 fund complexes would use these systems (including substantially all of the largest, and most of the medium-sized, fund families). If all of these complexes use these service providers' systems at the rate described above, they would incur a one-time system development cost of $4,750,000[81] and an annual system use cost of approximately $6,175,000.[82] Those 475 fund complexes may also incur system development costs related to the processing of information under the rule on trades that they receive through other channels than these service providers' systems, which we estimate to cost approximately $50,000 per fund complex, and $20,000 annually, for a total of $23,750,000[83] in system development costs and $9,500,000 annually.[84] Our staff estimates that the total system development cost for these 475 fund complexes that are likely to use these existing systems is $28,500,000 with annual operation costs of $15,675,000.[85]

There are approximately 900 fund complexes currently operating, of which approximately 475 may use these existing systems, leaving approximately 425 fund complexes possibly needing to develop specific systems to meet their own particular needs. Our staff understands that approximately 75 percent of those fund complexes (or 319 complexes) are small to medium-sized direct-sold funds that have a very limited number of intermediaries. Our staff anticipates that those 319 fund complexes would incur minimal system development costs to comply with the information-sharing provisions of the rule, due to the limited number of intermediaries with which they interact. Our staff estimates that system development costs for handling information under the rule for those 319 fund complexes will be approximately $25,000 each, with annual operation costs of approximately $10,000, for a total system development cost of $7,975,000[86] and an annual operations cost of $3,190,000.[87]

The remaining approximately 106 fund complexes may face additional complexities or special circumstances in developing their systems. Our staff estimates that the start-up costs for those fund complexes will be approximately $100,000 per fund complex and the annual costs for handling the information will be approximately $25,000, for a total start-up cost of $10,600,000 and an annual cost of $2,650,000 for these fund complexes.[88]

For purposes of the Paperwork Reduction Act, our staff therefore estimates that the information-sharing provisions of the rule as proposed to be amended would cost all fund complexes a total of approximately $47,075,000 in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and receive the required identity and

[75] *See* Tom Leswing, *Redemption Rule Fuels Demand For New Standards*, Ignites (Oct. 26 2005).

[76] This estimate is based on the following calculation: 4,500 hours of legal drafting time plus 1,080,000 hours of agreement negotiating time plus 225,000 hours of intermediary identification time equals 1,309,500 total hours; and $43,200,000 plus $1,350,000 plus $9,000,000 equals $53,550,000.

[77] Third party administrators maintain accounts for many other intermediaries, and therefore incur the costs to develop a single system.

[78] These service providers systems include the NSCC's Fund/SERV system, as well as other systems being developed by a number of other providers such as SunGard and Charles Schwab. *See supra* note 40.

[79] We expect that, in many cases, upgrades to fund transfer agents' as well as fund complex's systems will take place, and the transfer agents' costs will be charged back to the fund complex. These system development and operation costs include our staff's estimates of the potential charges by transfer agents, but do not include potential charges by intermediaries for providing the information.

[80] This estimate is based on the following calculations: 100,000 transaction requests times one quarter of a cent (the charge is 25 cents per 100 transactions requested, or one quarter of a cent per transaction) equals $250; and $250 times 52 weeks equals $13,000.

[81] This estimate is based on the following calculation: 475 fund complexes times $10,000 (one-time system update costs) equals $4,750,000.

[82] This estimate is based on the following calculation: 475 fund complexes times $13,000 (annual costs) equals $6,175,000.

[83] This estimate is based on the following calculation: 475 fund complexes times $50,000 system development cost per fund complex equals $23,750,000.

[84] This estimate is based on the following calculation: 475 fund complexes times $20,000 annual costs per fund complex equals $9,500,000.

[85] This estimate is based on the following calculations: $23,750,000 plus $4,750,000 (one-time system development costs) equals $28,500,000 total start-up costs for fund complexes utilizing existing systems; and $6,175,000 plus $9,500,000 equals $15,675,000 in annual costs.

[86] This estimate is based on the following calculations: 319 funds times $25,000 equals $7,975,000.

[87] This estimate is based on the following calculations: 319 funds times $10,000 equals $3,190,000.

[88] This estimate is based on the following calculations: 106 funds times $100,000 equals $10,600,00; and 106 funds times $25,000 equals $2,650,000.

transaction information from intermediaries, and a total of $21,515,000 each year thereafter in operation costs related to the transmission and receipt of the information.[89]

2. Intermediaries

The Commission staff estimates that there are approximately 7000 intermediaries that may provide information pursuant to the information-sharing provisions of rule 22c–2.[90] Of those 7000 intermediaries, our staff anticipates that approximately 350 of these intermediaries are likely to primarily use the existing systems that are in place or under development.[91] The staff understands that these approximately 350 intermediaries include several major ''clearing brokers'' and third-party administrators that aggregate trades and handle the back-end work for thousands of other smaller broker-dealers and intermediaries, thereby likely providing access to these service providers' information-sharing systems to a significant majority of all intermediaries in the marketplace. Our staff estimates that these approximately 350 intermediaries would provide access to systems that will allow for the transmission of information required by the rule and other processing for the transactions of approximately 80 percent of the 7000 intermediaries (5600 intermediaries) effected by the rule, leaving 1400 intermediaries that do not in some way utilize these systems, and that may need to develop their own systems.[92]

Our staff understands that in general, the providers who have developed or are developing these information sharing systems charge the fund, and not the intermediary for providing these systems to transmit shareholder identity and transaction information, or else include access to such systems as a complementary part of their other processing systems, and do not charge additional fees to intermediaries for its utilization. These intermediaries may be required to develop systems to ensure that they are able to transmit the records to these service providers in a standardized format.[93] Our staff estimates that it may cost each of these 350 intermediaries approximately $200,000 to update its systems to record and transmit shareholder identity and transaction records to these service providers, and an additional $100,000 each year to operate their own systems for communicating with the service providers, for a total start-up cost of $70,000,000, and an annual cost of $35,000,000.[94] We understand that these approximately 350 intermediaries may also have to upgrade their systems to handle rule 22c–2 information on trades that do not go through the service providers' systems. Our staff estimates that it will cost each of those 350 intermediaries[95] an additional $250,000[96] to update their systems, and $100,000 annually to process rule 22c–2 information through non service provider networks, for a total cost of $87,500,000 in system development costs and $35,000,000 in annual costs to process data through non service provider networks. Our staff therefore estimates that these approximately 350 intermediaries will incur a total of approximately $157,500,000 in start-up costs and $70,000,000 in annual costs associated with the information-sharing provisions of the rule.[97]

The fund complexes and intermediaries that do not use these service providers' systems to process their trades would have to either develop their own systems to share information under the rule or engage some other third-party administrator to process the information. Our staff estimates that approximately 1400 intermediaries will not utilize these service provider systems to process this information, and estimates that each of these intermediaries will incur $50,000 in system development costs and $50,000 in annual costs in complying with the rule, for a total of $70,000,000 in development costs and $70,000,000 in annual costs for those intermediaries.[98] We understand that there is a task force that is in the process of developing industry standards for transmitting information under the rule between market participants that do not use these service provider systems.[99] This is likely to reduce costs to both funds and intermediaries.

Our staff estimates that the information-sharing provisions of the rule will cost all intermediaries a total of approximately $227,500,000 in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and transmit the required identity and transaction information to funds and from other intermediaries, and a total of $140,000,000 each year thereafter in operation costs related to the transmission and receipt of the information.[100]

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[89] This estimate is based on the following calculations: $28,500,000 (funds' that use service providers start-up costs) plus $7,975,000 (direct-traded funds' start-up costs) plus $10,600,000 (other funds' start-up costs) equals $47,075,000 system development costs; and $15,675,000 (funds' that use service providers start-up costs) plus $3,190,000 (direct-traded funds' annual costs) plus $2,650,000 (other funds' annual costs) equals $21,515,000 annual funds' costs.

[90] This 7000 number is a rounded estimate, based on the number of intermediaries that may be affected by the rule as we propose to revise it. It consists of the following: 2203 broker-dealers classified as specialists in fund shares, 196 insurance companies sponsoring registered separate accounts organized as unit investment trusts, approximately 2400 banks that sell funds or variable annuities (the number of banks is likely over inclusive as it may include a number of banks that do not sell registered variable annuities or funds and/or banks that do their business through a registered broker-dealer on the same premises), and approximately 2000 retirement plans, third-party administrators, and other intermediaries (this number may be either over or under inclusive, as under the rule as we propose to revise it, the actual number of intermediaries that funds have is dependent on the precise application of varying fund policies on short-term trading).

[91] *See supra* note 40.

[92] This number is based on the following calculation: 7000 total intermediaries times 20% (the percentage of intermediaries do not use these service providers systems or use the services of the those 350 intermediaries that do) equals 1400 intermediaries that do not use these service providers' systems.

[93] Our staff anticipates that in most cases, first-tier intermediaries will use the same or slightly modified systems that they have developed to identify and transmit shareholder identity and transaction information to funds when collecting and transmitting this information from indirect intermediaries. Therefore, we have also included the costs of developing and operating systems to collect information from indirect intermediaries and providing the information to funds in these estimates.

[94] This estimate is based on the following calculation: 350 broker-dealer times $200,000 (start-up costs) equals $70,000,000; and 350 broker-dealer times $100,000 (start-up costs and annual costs) equals $35,000,000.

[95] The estimate includes higher costs for these 350 intermediaries in developing systems to handle non service provider information than for remaining intermediaries to handle the same data due to our staff's understanding that, in general, these 350 intermediaries that utilize the service provider's networks represent the largest intermediaries in the marketplace, and will face the highest costs in complying with the rule.

[96] Many of the costs that intermediaries incur in developing and operating systems to handle this information may be recouped from fund complexes through a variety of methods. However, it is unclear what recoupment might take place, and therefore the cost estimates for funds and intermediaries are made here prior to any potential recoupment.

[97] This estimate is based on the following calculations: $70,000,000 (intermediary start-up costs for processing information through service providers) plus $87,500,000 (intermediary start-up costs for handling information through other channels) equals $157,500,000; and $35,000,000 (intermediary annual costs for processing information through service providers) plus $35,000,000 (intermediary annual costs for handling information through other channels) equals $70,000,000.

[98] This estimate is based on the following calculation: 1400 intermediaries times $50,000 (development costs) equals $70,000,000; and 1400 intermediaries times $50,000 (annual costs) equals $70,000,000.

[99] *See* Tom Leswing, *Redemption Rule Fuels Demand For New Standards,* Ignites (Oct. 26 2005).

[100] This estimate is based on the following calculations: $157,500,000 (intermediaries that use service providers' start-up costs) plus $70,000,000

Although the rule does not require first-tier intermediaries to enter into an agreement with their indirect intermediaries to share the indirect intermediaries' underlying shareholder data to funds upon a fund's request, we anticipate that in many cases intermediaries will nonetheless enter into such agreements, or at least enter into informal arrangements and design methods by which to collect the shareholder information. Our staff estimates that each of the 7000 intermediaries potentially affected by the rule will spend approximately 150 hours of service representatives' time at $40 per hour, and 10 hours of legal counsel time at $300 per hour, for a total of 1,050,000 hours of service representatives' time at a cost of $42,000,000, and 70,000 hours of in-house legal time at a cost of $21,000,000 to design and enter into these arrangements with other intermediaries.[101] The Commission staff therefore estimates that intermediaries will expend a total of approximately 1,120,000 hours at a cost of $63,000,000 to enter into arrangements to ensure the proper transmittal of information to funds through chains of intermediaries.[102]

C. Total Costs and Hours Incurred

For purposes of the Paperwork Reduction Act, our staff estimates that the amended rule would have a total collection of information cost in the first year to both funds and intermediaries of $274,575,000 in one-time start-up costs, and annual operation costs of $161,515,000.[103] Our staff estimates that the weighted average annual cost of the rule to funds and intermediaries for each of the first three years would be $253,040,000.[104] The total hours expended by both funds and intermediaries in complying with the amended rule would be a one-time expenditure of 2,429,500 hours at a total internal cost of $116,550,000.[105] We anticipate that there will be a total of approximately 7900 [106] respondents, with approximately 3,510,000 total responses in the first year, and 3,240,000 annual responses each year thereafter.[107]

D. Request for Comments

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609 with reference to File No. S7–06–06. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–06–06, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

IX. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with 5 U.S.C. 603. It relates to amendments to rule 22c–2 under the Investment Company Act, which we are proposing in this Release.

A. Reasons for the Proposed Action

Rule 22c–2 allows funds to recover some, if not all, of the direct and indirect (*e.g.*, market impact and opportunity) costs incurred when shareholders engage in short-term trading of the fund's shares, and to deter this short-term trading. As discussed more fully in Sections I and II of this Release, the proposed amendments to rule 22c–2 are necessary to clarify any potentially misleading interpretations of the rule, to enable funds and intermediaries to reduce costs associated with entering into agreements under the rule, and to enable funds to focus their short-term trading deterrence efforts on the entities most likely to violate fund policies. The proposed amendments would also set forth the limitations on transactions between a fund and an intermediary with whom the fund does not have an agreement.

(other intermediaries' start-up costs) equals $227,500,000 in total intermediary start-up costs; and $70,000,000 (intermediaries that use service providers annual costs) plus $70,000,000 (other intermediaries' annual costs) equals $140,000,000 in annual costs.

[101] This estimate is based on the following calculations: 7000 intermediaries times 150 service representative hours at $40 per hour equals 1,050,000 hours at a cost of $42,000,000; and 7000 intermediaries times 10 hours of in-house legal time at $300 per hour equals 70,000 hours at a cost of $21,000,000.

[102] This estimate is based on the following calculations: 1,050,000 service representative hours at $42,000,000 plus 70,000 in-house counsel hours at $21,000,000 equals 1,120,000 hours at $63,000,000.

[103] This estimate is based on the following calculation: $47,075,000 (fund start-up costs) plus $227,500,000 (intermediary start-up costs) equals $274,575,000 in total start-up costs; and $21,515,000 (fund annual costs) plus $140,000,000 (intermediary annual costs) equals $161,515,000 in total annual costs.

[104] This estimate is based on the following calculation: $274,575,000 in total start-up costs plus $484,545,000 (3 years at $161,515,000 in total annual costs) equals $759,120,000 in total costs over a three year period. $759,545,000 divided by three years, equals a weighted average cost of $253,040,000 per year.

[105] This estimate is based on the following calculations: 1,309,500 hours at a cost of $53,550,000 in agreement time plus 1,120,000 hours at a cost of $63,000,000 in chain of intermediary arrangement time equals 2,429,500 hours at a cost of $116,550,000.

For purposes of the Paperwork Reduction Act, the Adopting Release included an estimate of the total start up costs to funds and financial intermediaries in complying with the collection of information aspect of the rule of approximately $1,111,500,000. We estimate that if the proposed amendments are adopted, for purposes of the Paperwork Reduction Act, funds and intermediaries would incur the reduced amount of $274,575,000 in start-up costs, for a potential cost reduction of approximately $836,925,000. In the Adopting Release we also estimated that the ongoing annual costs would be $390,556,800. We estimate that if the proposed amendments are adopted, for purposes of the Paperwork Reduction Act, funds and intermediaries would incur the reduced amount of $161,515,000 in total annual costs, for a potential ongoing annual cost reduction of approximately $229,041,800.

[106] This estimate is based on the following calculation: 7000 intermediaries plus 900 fund complexes equals 7900 respondents.

[107] This estimate is based on the following calculation: 900 fund complexes with an average of 300 intermediaries each, equals 270,000 one time responses for the shareholder information portion of the collection (900 funds times 300 intermediaries equals 270,000). Assuming that each fund requests information from each of its intermediaries once each month, the total number of annual responses would be 3,240,000 (270,000 fund intermediaries times 12 months equals 3,240,000 annual responses). Therefore, in the first year, there would be 3,510,000 total responses (3,240,000 monthly responses plus the 270,000 initial responses required for the agreements) and 3,240,000 annual responses thereafter.

B. Objectives of the Proposed Action

As discussed more fully in Sections I and II of this Release, the objective of the proposed rule amendments is to ensure that the investor protections of rule 22c–2 are fully maintained, while reducing costs to all participants, and addressing certain issues with the rule as adopted.

C. Legal Basis

As indicated in Section X of this Release, these amendments to rule 22c–2 are proposed pursuant to the authority set forth in sections 6(c), 22(c) and 38(a) of the Investment Company Act.[108]

D. Small Entities Subject to the Proposed Rule and Amendments

A small business or small organization (collectively, ''small entity'') for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[109] Of approximately 3,925 funds (2,700 registered open-end investment companies and 825 registered unit investment trusts), approximately 163 are small entities.[110] A broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital.[111] Of approximately 7,000 registered broker-dealers, approximately 880 are small entities.

As discussed above, rule 22c–2 provides funds and their boards with the ability to impose a redemption fee designed to reimburse the fund for the direct and indirect costs incurred as a result of short-term trading strategies, such as market timing. The proposed amendments are designed to maintain these investor protections while reducing costs to market participants and clarifying the Commission's intent as to the proper interpretation of the rule. While we expect that the rule and these proposed amendments would require some funds and intermediaries to develop or upgrade software or other technological systems to enforce certain market timing policies, or make trading information available in omnibus accounts, the amendments we are proposing today are specifically designed to reduce the costs incurred by small entities. In particular, we anticipate that the changes we propose to make to the definition of financial intermediary would significantly reduce the number of small intermediaries that funds must enter into agreements with, and reduce the burden of complying with the rule for small funds and small intermediaries. We request that commenters address the costs of complying with these amendments, including specific data on costs when available and a description of the likely technologies that may be used.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments do not introduce any new mandatory reporting requirements. Rule 22c–2 already contains a mandatory recordkeeping requirement for funds that redeem shares within seven days of purchase. The fund must retain a copy of the written agreement between the fund and financial intermediary under which the intermediary agrees to provide the required shareholder information in omnibus accounts.[112] The proposed amendments reduce the number of small entities that would otherwise be subject to this recordkeeping requirement.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed rule amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

The Commission does not presently believe that these proposed amendments would require the establishment of special compliance requirements or timetables for small entities. These proposed amendments are specifically designed to reduce any unnecessary burdens on all funds (including small funds) and on small intermediaries. To establish special compliance requirements or timetables for small entities may in fact disadvantage small entities by encouraging larger market participants to focus primarily on the needs of larger entities when establishing the information-sharing systems envisioned by the rule and these proposed amendments, and possibly ignoring the needs of smaller entities. Nevertheless, we request comment as to whether establishing special timetables or compliance requirements would benefit small entities, while accomplishing the goals of the rulemaking. Would it benefit small entities to have additional time to comply with these amendments? Should we further revise the rule to reduce the compliance requirements for small entities? Are there other compliance requirement alternatives?

With respect to further clarifying, consolidating, or simplifying the compliance requirements of the rule, using performance rather than design standards, and exempting small entities from coverage of these proposed amendments or any part of the rule, we believe such additional changes would be impracticable. These proposed amendments would in effect except a large number of smaller entities from the scope of the rule, by revising the definition of financial intermediary. We have designed these proposed amendments to reduce the cost and compliance burden on small entities to the greatest extent practicable while still maintaining the investor protections of the rule as adopted.

Small entities are as vulnerable to the problems uncovered in recent enforcement actions and settlements as large entities. Therefore, shareholders of small entities are equally in need of protection from short-term traders. We believe that the rule and these proposed amendments will enable funds to more effectively discourage short-term trading of all fund shares, including those held in omnibus accounts. Further excepting small entities from coverage of the rule or any part of the rule could compromise the effectiveness of the rule. We anticipate that the proposed amendments would alleviate much of the burden imposed by the rule on small entities, and result in a more cost effective system for discouraging short-term trading for all entities. Alternatives that we considered but are not proposing included, among others, (i) fully exempting all small entities from complying with the information-sharing aspect of the rule, (ii) not requiring that the information-sharing agreement obligate first-tier intermediaries to assist

[108] 15 U.S.C. 80a–6(c), 80a–22(c) and 80a–37(a).

[109] 17 CFR 270.0–10.

[110] Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[111] 17 CFR 240.0–10.

[112] Rule 22c–2(a)(3).

in providing information from indirect intermediaries to funds, and (iii) extending the compliance date for small entities.

In light of the above discussion, we request comment on whether it is feasible or necessary to make additional or different accommodations for small entities for compliance with the proposed rule amendments. Should the proposed rule amendments be further altered in order to ease the regulatory burden on small entities, without sacrificing its effectiveness? Are there additional alternatives that we have not considered?

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. Comment is specifically requested on the number of small entities that would be affected by the proposed rule, and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting its extent. These comments will be considered in connection with any adoption of the proposed rule and amendments, and will be reflected in the Final Regulatory Flexibility Analysis.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–06–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–06–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

X. Statutory Authority

The Commission is proposing amendments to rule 22c–2 pursuant to the authority set forth in sections 6(c), 22(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–22(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Section 270.22c–2 is revised to read as follows:

§ 270.22c–2 Redemption fees for redeemable securities.

(a) *Redemption fee.* It is unlawful for any fund issuing redeemable securities, its principal underwriter, or any dealer in such securities, to redeem a redeemable security issued by the fund within seven calendar days after the security was purchased, unless it complies with the following requirements:

(1) *Board determination.* The fund's board of directors, including a majority of directors who are not interested persons of the fund, must either:

(i) Approve a redemption fee, in an amount (but no more than two percent of the value of shares redeemed) and on shares redeemed within a time period (but no less than seven calendar days), that in its judgment is necessary or appropriate to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund, the proceeds of which fee will be retained by the fund; or

(ii) Determine that imposition of a redemption fee is either not necessary or not appropriate.

(2) *Shareholder information.* With respect to each financial intermediary that submits orders to purchase or redeem shares directly to the fund, its principal underwriter or transfer agent, or to a registered clearing agency, the fund (or on the fund's behalf, the principal underwriter, transfer agent, or registered clearing agency), must either:

(i) Enter into a shareholder information agreement with the financial intermediary; or

(ii) Prohibit the financial intermediary from purchasing, on behalf of itself or other persons, securities issued by the fund.

(3) *Recordkeeping.* The fund must maintain a copy of the written agreement under paragraph (a)(2)(i) of this section that is in effect, or at any time within the past six years was in effect, in an easily accessible place.

(b) *Excepted funds.* The requirements of paragraph (a) of this section do not apply to the following funds, unless they elect to impose a redemption fee pursuant to paragraph (a)(1) of this section:

(1) Money market funds;

(2) Any fund that issues securities that are listed on a national securities exchange; and

(3) Any fund that affirmatively permits short-term trading of its securities, if its prospectus clearly and prominently discloses that the fund permits short-term trading of its securities and that such trading may result in additional costs for the fund.

(c) *Definitions.* For the purposes of this section:

(1) *Financial intermediary* means:

(i) Any broker, dealer, bank, or other person that holds securities issued by the fund, in nominee name;

(ii) A unit investment trust or fund that invests in the fund in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)); and

(iii) In the case of a participant-directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A)) or any person that maintains the plan's participant records.

(iv) *Financial intermediary* does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund.

(2) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the Act (15 U.S.C. 80a–8), and includes a separate series of such an investment company.

(3) *Money market fund* means an open-end management investment company that is registered under the

Act and is regulated as a money market fund under § 270.2a–7.

(4) *Shareholder* includes a beneficial owner of securities held in nominee name, a participant in a participant-directed employee benefit plan, and a holder of interests in a fund or unit investment trust that has invested in the fund in reliance on section 12(d)(1)(E) of the Act. A shareholder does not include a fund investing pursuant to section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)), a trust established pursuant to section 529 of the Internal Revenue Code (26 U.S.C. 529), or a holder of an interest in such a trust.

(5) *Shareholder information agreement* means a written agreement under which a financial intermediary agrees to:

(i) Provide, promptly upon request by a fund, the Taxpayer Identification Number of all shareholders who have purchased, redeemed, transferred, or exchanged fund shares held through an account with the financial intermediary, and the amount and dates of such shareholder purchases, redemptions, transfers, and exchanges;

(ii) Execute any instructions from the fund to restrict or prohibit further purchases or exchanges of fund shares by a shareholder who has been identified by the fund as having engaged in transactions of fund shares (directly or indirectly through the intermediary's account) that violate policies established by the fund for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund; and

(iii) Use best efforts to determine, promptly upon the request of the fund, whether any other person that holds fund shares through the financial intermediary is itself a financial intermediary (''indirect intermediary'') and, upon further request by the fund,

(A) Provide (or arrange to have provided) the identification and transaction information set forth in paragraph (c)(5)(i) of this section regarding shareholders who hold an account with an indirect intermediary; or

(B) Restrict or prohibit the indirect intermediary from purchasing, on behalf of itself or other persons, securities issued by the fund.

Dated: February 28, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3164 Filed 3–6–06; 8:45 am]

BILLING CODE 8010–01–P

POSTAL SERVICE

39 CFR Part 111

New Preparation for Periodicals Flats in Mixed Area Distribution Center Bundles and Sacks

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service currently allows Periodicals mailers to prepare two types of mixed area distribution center (ADC) bundles and sacks, including a new type of optional mixed ADC bundle and sack that improves service for Periodicals without adding processing costs. We are proposing to make this optional separation a requirement beginning July 6, 2006.

DATES: We must receive comments on our proposed standards on or before April 6, 2006.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington DC 20260–3436. You may inspect and photocopy all written comments between 9 a.m. and 4 p.m., Monday through Friday, at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington DC 20260.

FOR FURTHER INFORMATION CONTACT: Donald Lagasse, 202–268–7269.

SUPPLEMENTARY INFORMATION: On October 27, 2005, the Postal Service provided Periodicals mailers an option to separate their residual mail prepared in mixed area distribution center (ADC) bundles and sacks and to create a new type of mixed ADC bundle and sack. We offered this option because it improves service for some Periodicals without adding processing costs. The new separation allows us to integrate Periodicals flats into the First-Class mailstream for Periodicals addressed to destinations within the First-Class Mail surface transportation reach of the office of entry.

Under the new preparation, mailers separate some mixed ADC mail according to the destination ZIP Codes in new labeling list L201. Pieces prepared according to L201 are processed with First-Class Mail by the entry office. The remaining mixed ADC mail destined for ZIP Codes farther from the office of entry is sent to one of the 34 origin facilities designated in labeling list L009 for consolidated processing.

To fully benefit from this new preparation, Periodicals mailers should begin preparing Periodicals mail under these standards as soon as possible. Having all mixed ADC mail prepared uniformly allows us to establish a consistent network and operating procedure for handling this mail across our processing facilities. Processing some Periodicals mail with the existing outgoing First-Class Mail at approximately 330 locations will have little impact on the operations at these offices but will relieve the 34 locations currently processing this consolidated volume of a significant amount of work. Finally, splitting the mixed ADC mail currently prepared in one or more sacks into two separations will have minimal or, in some cases, no impact on the number of containers that are prepared in Periodicals mailings.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

9.0 Preparation for Cotraying and Cosacking Bundles of Automation and Presorted Flats

* * * * *

9.2 Periodicals

* * * * *

9.2.5 Sack Preparation and Labeling

* * * * *

[*Revise the bundle labeling requirements in item f for origin mixed ADC mail.*]

f. *Origin mixed ADC.* Required for any remaining pieces for destinations in L201, Column C, of the origin ZIP Code in Column A. There is no minimum for the number of pieces in the sack, but bundles of fewer than six pieces at 5-

digit, 3-digit, and ADC bundle levels are not permitted.

1. Line 1: Use L201, Column C.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS WKG W FCM.''

* * * * *

9.2.6 Optional Tray Preparation—Flat-Size Pieces

* * * * *

a. ADC * * *

* * * * *

[*Revise item a2 to match the CIN code.*]

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS,'' followed by ''ADC,'' followed by ''BC/NBC.''

* * * * *

c. Mixed ADC * * *

* * * * *

[*Revise item c2 to match the CIN code.*]

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS,'' followed by ''BC/NBC WKG.''

* * * * *

10.0 Preparation for Merged Containerization of Bundles of Flats Using City State Product

10.1 Periodicals

* * * * *

10.1.4 Sack Preparation and Labeling

* * * * *

[*Revise the preparation requirements in item h for origin mixed ADC mail.*]

h. *3-digit through mixed ADC sacks.* Any 5-digit scheme and 5-digit bundles remaining after preparing sacks under 10.1.4a through 10.1.4g, and all 3-digit scheme, 3-digit, ADC, origin mixed ADC, and mixed ADC bundles must be sacked and labeled according to the applicable requirements under 9.2 for cosacking of automation rate and presorted rate bundles, except if there are no automation rate pieces in the mailing job, sack and label under 707.22.6, or, if there are no presorted rate bundles in the mailing job, sack and label under 707.25.3.

* * * * *

11.0 Preparation of Cobundled Automation Rate and Presorted Rate Flats

* * * * *

11.2 Periodicals

* * * * *

11.2.2 Bundle Preparation

* * * * *

[*Revise the bundling requirements in item g for origin mixed ADC mail.*]

g. *Origin mixed ADC,* required; no minimum; for any remaining pieces for destinations of the origin ZIP Code in L201, Column C, of the origin ZIP Code in Column A; tan Label X or OEL.

* * * * *

707 Periodicals

* * * * *

22.0 Preparation of Presorted Periodicals

* * * * *

22.2 Bundle Preparation

* * * * *

[*Revise the bundle labeling requirements in item e for origin mixed ADC mail.*]

e. *Origin mixed ADC,* required; no minimum; for any remaining pieces for destinations in L201, Column C, of the origin ZIP Code in Column A; tan label X or OEL.

* * * * *

22.6 Sack Preparation—Flat-Size Pieces and Irregular Parcels

* * * * *

[*Revise the sacking requirements in item f for origin mixed ADC mail.*]

f. *Origin mixed ADC,* required; no minimum; for any remaining bundles for destinations in L201, Column C, of the origin ZIP Code in Column A.

1. Line 1: Use L201, Column C.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''FLTS'' or ''IRREG'' as applicable, followed by ''WKG W FCM.''

* * * * *

25.0 Preparation of Flat-Size Automation Periodicals

* * * * *

25.2 Bundling and Labeling

* * * * *

[*Revise the bundling and labeling requirements in item f for origin mixed ADC mail.*]

f. *Origin mixed ADC,* required; no minimum; for any remaining pieces for destinations in L201, Column C, of the origin ZIP Code in Column A; tan label X or OEL.

* * * * *

25.3 Sacking and Labeling

* * * * *

[*Revise the sacking and labeling requirements in item g for origin mixed ADC mail.*]

g. *Origin mixed ADC,* required; no minimum; for any remaining pieces for destinations in L201, Column C, of the origin ZIP Code in Column A; labeling:

1. Line 1: Use L201, Column C.

2. Line 2: ''PER FLTS WKG W FCM'' or ''NEWS FLTS WKG W FCM,'' as applicable.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–3143 Filed 3–6–06; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Agave eggersiana and Solanum conocarpum as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the plants *Agave eggersiana* (no common name) and *Solanum conocarpum* (marrón bacora) as endangered under the Endangered Species Act of 1973, as amended (Act). After reviewing the best available scientific and commercial information, we find that listing *A. eggersiana* and *S. conocarpum* is not warranted at this time. However, we will continue to seek new information on the biology of these species as well as potential threats. We also ask the public to submit to us any new information that becomes available concerning the status of, or threats to, *A. eggersiana* and *S. conocarpum*. This information will help us monitor the status of these species. If additional data become available, we may reassess the need for listing.

DATES: The finding announced in this document was made on February 22, 2006.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the Boquerón Ecological Services Field Office, U.S. Fish and Wildlife Service, Road 301, Km. 5.1 in Boquerón, Puerto Rico. Please submit any new information, materials, comments, or questions concerning these species or this finding to the above address or P.O. Box 491, Boquerón, Puerto Rico 00622.

FOR FURTHER INFORMATION CONTACT: Dr. Jorge E. Saliva, Wildlife Biologist, Boquerón Field Office, at the address above (787–851–7297, ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition. The finding must be that the petitioned action is (a) Not warranted; (b) warranted; or (c) warranted, but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding (that is, requiring a subsequent finding to be made within 12 months). Each subsequent 12-month finding will be published in the **Federal Register**.

On November 21, 1996, we received a petition from the U.S. Virgin Islands Department of Planning and Natural Resources (DPNR) requesting that we list two species of plants in the U.S. Virgin Islands as endangered: *Agave eggersiana* and *Solanum conocarpum*. We published our finding that the petition to list *A. eggersiana* and *S. conocarpum* presented substantial information indicating that the requested action may be warranted in the **Federal Register** on November 16, 1998 (63 FR 63659) and initiated a status review on these two plants. On September 1, 2004, a lawsuit was filed against the Department of the Interior and the Service by the Center for Biological Diversity challenging our alleged failure to publish a 12-month finding (*Center for Biological Diversity* v. *Gale Norton et al.*, Civil Action No. 1:04–CV–2553 CAP) (N.D. Ga.). In a Stipulated Settlement Agreement, signed April 27, 2005, we agreed to submit our 12-month finding to the **Federal Register** by February 28, 2006.

Biology and Distribution

Agave eggersiana

Agave eggersiana (no common name) is a flowering plant of the family Agavaceae (century plant family) known only from the island of St. Croix in the U.S. Virgin Islands. Two other species occur naturally in the Virgin Islands, *A. missionum* (corita) and *A. sisalana* (sisal), neither of which are endemic to St. Croix. *A. eggersiana* was originally described in 1913 by Trelease from material collected on St. Croix, and it is distinguished from other members of the Agavaceae family by its acaulescent (without an evident leafy stem), non-suckering growth habit (does not reproduce vegetatively by forming offshoots around its base), and fleshy, nearly straight leaves with small marginal prickles (1.00 millimeter (mm) (0.04 inches (in)) long) that are nearly straight (Britton and Wilson 1923; Proctor and Acevedo-Rodríguez 2005). Its flowers are deep yellow, 5 to 6 centimeters (cm) (1.95 to 2.34 in) long. Fruits are unknown; after flowering, the panicles (inflorescence) produce numerous small vegetative bulbs, from which the species can be propagated (Proctor and Acevedo-Rodríguez 2005). There is no information available on the biology, ecology, and phenology of *A. eggersiana*.

A. eggersiana was originally collected in 1913 by Trelease on St. Croix (type location) (Britton and Wilson 1923; Acevedo-Rodríguez 1996; Proctor and Acevedo-Rodríguez 2005). Britton and Wilson (1923) reported the species from hillsides and plains in the eastern dry districts of St. Croix but did not provide population estimates. Information provided in the petition letter (B. Kojis and R. Boulon, DPNR, pers. comm. 1996) specified that the species was last observed growing in the wild around 1984 to 1986 on St. Croix. In a subsequent letter, DPNR stated that the species ''may be extinct'' but that ''descendants from original plants may exist to the north of Great Pond near the original site of camp Arawak'' (D. Plaskett, DPNR, pers. comm. 2003). However, no information was provided to clarify whether or not field surveys had been conducted in the area to search for the original plants. Furthermore, neither letter provided any scientific literature citations or systematic survey information in support of the possibility of extinction or, rather, extirpation from the wild. Proctor and Acevedo-Rodríguez (2005) provided a general description of the species and state that the species ''now appears to be extinct in the wild.'' However, no citations or survey information were provided. The Service is uncertain about the original source that reported the extirpation of this species from the wild and has not confirmed that any systematic surveys for this species have been conducted. Therefore, we believe that at present, the status of this species in the wild is unknown.

All currently known occurrences of *A. eggersiana* are plants that were cultivated. Britton and Wilson (1923) noted that *A. eggersiana* has been in cultivation on St. Croix and St. Thomas as an ornamental plant since the early 20th century. The 1996 petition letter reported the existence of several small populations of *A. eggersiana* established on St. Croix through propagation efforts conducted by local horticulturists and botanical gardens. They mentioned that propagated plants were distributed to private individuals for planting as an effort to prevent extinction of this species. However, no information was provided regarding the origin of propagated materials. D. Plaskett (pers. comm. 2003) stated that cultivated plants ''have been established'' and specified one privately owned residential location. We know of other cultivated specimens on the airport grounds in St. Croix, the University of Virgin Islands in St. Thomas (Acevedo-Rodríguez, Smithsonian Institution, pers. comm. 2005), and at botanical gardens in the United States, such as Fairchild Tropical Garden in Miami, Florida.

In summary, both the historic and present status of *A. eggersiana* are unknown; all known plant individuals are cultivars; systematic surveys for the species are lacking; no information is available on the species biology, ecology, and phenology; and no genetic studies have been conducted to determine if there is genetic variability among known individuals.

Solanum conocarpum

Solanum conocarpum (marrón bacora) is a dry forest shrub of the Solanaceae, or tomato, family that may attain 3 m (9.8 ft) in height. Its leaves are from 3.5 to 7 cm (0.62 to 1.5 in) wide, oblong-elliptic or oblanceolate (broader at the distal third than the middle), coriaceous (leathery texture), glabrous (not hairy), and have a yellowish midvein. The flowers are usually paired in nearly sessile (not stalked) lateral or terminal cymes (flat-topped flower cluster). The corolla consists of five separate petals that are light violet, greenish at the base, and about 2 cm (0.78 in) wide. The fruit, a berry, is ovoid-conical (teardrop shaped), 2 to 3 cm (0.78 to 1.2 in) long, and turns from green with white striations to golden yellow when ripe (Acevedo-Rodríguez 1996). Little is known about the reproductive biology

of this species (Ray and Stanford 2003). Ongoing propagation efforts (such as Ray 2005) will likely provide additional information.

Although in the petition letter B. Kojis and R. Boulon (pers. comm. 1996) suggested that *S. conocarpum* might be functionally dioecious (having male and female flowers on different plants), P. Acevedo-Rodríguez (pers. comm. 2002) contradicted this possibility. He believes that the species is not dioecious and documented flowers and fruits in one wild individual he discovered in the White Cliff area (although it was the only individual on that side of the island). Ray and Stanford (2003) documented that the seeds have thin coats and are therefore unlikely to be represented in the soil seed bank. Ray (2005) reported ample fruit and seed production in the wild. Although no seedling recruitment was observed in the wild by Ray and Stanford (2003) and J. Saliva (USFWS, pers. observation (obs.) 2004), Ray (2005) reported that a few seedlings were observed in the wild population located in Estate Concordia.

S. conocarpum was originally known from a type specimen collected by L.C. Richard at Coral Bay, St. John (U.S. Virgin Islands), in 1787 (Acevedo-Rodríguez 1996). Although no population estimates are available for the type locality, P. Acevedo-Rodríguez (pers. comm. 2002) reported that the species seemed to be locally common at the beginning of the 19th century. The species was rediscovered in 1992 by P. Acevedo-Rodríguez on the island of St. John (Ray and Stanford 2003). B. Kojis and R. Boulon (pers. comm. 1996) mentioned that only two individuals were known growing in the wild on St. John: One individual on Virgin Islands National Park (VINP) land, and the other growing on private land. These two localities are consistent with the localities reported by Acevedo-Rodríguez (1996; pers. comm. 2002), who described the habitat as dry, deciduous forest.

Acevedo-Rodríguez (1996) referenced the possibility of the species being present on St. Thomas and mentioned a collection of a sterile specimen from Virgin Gorda (British Virgin Islands (BVI)). Information provided by the B. Kojis and R. Boulon (pers. comm. 1996), however, reported the collection of a sterile specimen from Tortola, BVI. P. Acevedo-Rodríguez (pers. comm. 2002) clarified that his collection of the sterile specimen was from Virgin Gorda, but he believes that the specimen belongs to a different species, *Cestrum laurifolium*, and not *S. conocarpum*. However, no surveys have been conducted in St. Thomas or the BVI to determine if this species is present.

On St. John, Ray and Stanford (2003) reported five mature individuals from a total of six individuals in two locations within VINP (Europa Bay and Reef Bay Valley) and two locations on private land (Base Hill and Sabbat Point). Ray (2005) reported two additional locations (Estate Concordia and Johnson, Friis, and John's Folly Bays) and estimates close to 200 individuals in the wild. The largest population of *S. conocarpum* is near Nanny Point in Estate Concordia (J. Saliva, pers. obs. 2004). This population consists of approximately 184 plants that had been distributed across three contiguous parcels of privately owned land. Recently, one of the private property owners donated a portion of his property with a significant number of plants to the VINP (R. Boulon, NPS, pers. comm. 2006). The next largest wild population consists of 33 plants located on private land above Johnson, Friis, and John's Folly Bays' catchments.

Several efforts have been conducted to propagate *S. conocarpum* in the last decade. B. Kojis and R. Boulon (pers. comm. 1996) reported that a local horticulturist, E. Gibney, was able to propagate the species by cuttings (asexually) collected from the two individuals known from the wild and to get them to reproduce sexually by dusting the flowers. They further report that the ''many'' seedlings produced ''appear to grow vigorously.'' This information was corroborated by P. Acevedo-Rodríguez (pers. comm. 2002). He reported that Gibney has successfully reproduced this species and distributed specimens to various places in the Virgin Islands. He reported planted individuals (cultivars) in the Campus of the University of Virgin Islands in St. Thomas, which are sexually reproducing; a few more in the St. George Botanical Garden in St. Croix; and a few plants in Tortola, Cannel Bay Hotel on St. John, New York Botanical Garden, National Botanical Garden in Dominican Republic, and Puerto Rico Botanical Garden. He has performed germination tests and found 100 percent viability.

Ray and Stanford (2003) developed an implementation plan to conduct shadehouse propagation and reintroduce seedlings within the VINP on St. John. This project is in progress. R. Boulon (pers. comm. 2004) reported that Dr. Ray planted approximately 128 individuals in the park. Ray (2005) started a propagation project from cuttings (cloning) to augment populations of *S. conocarpum* in a private property on St. John. More than 300 cuttings were produced. Rooted cuttings will be planted during the 2006 rainy season (April to May).

P. Acevedo-Rodríguez (pers. comm. 2002), believes that both *A. eggersiana* and *S. conocarpum* have either small populations or may be nearly extinct. However, he believes this is not due to the current threat of development, but rather past land use history on the islands of St. Croix and St. John. From the 1700s through the late 1800s, 95 percent or more of these islands suffered intensive and extensive deforestation. St. Croix was colonized in the mid-to late-1600s and sugar cane was the principal product through the late 19th century. St. John was colonized in the early 1700s and divided into estates that principally cultivated sugar cane and cotton on most of the island (Woodbury and Weaver 1987). Acevedo-Rodríguez (1996) believed that the first 130 years of colonization had been ''particularly harsh'' on the natural resources of St. John. However, Woodbury and Weaver (1987) report that many of the estates were abandoned by the late 19th century and that common trees and shrubs regenerated, resulting in most of the island being covered by secondary forest at the time of their report. Approximately three-quarters of St. John is under the administration of the VINP, which was established in 1956 (Woodbury and Weaver 1987).

Previous Federal Actions

We identified *A. eggersiana* as a category 2 candidate species in the Notice of Review published in the **Federal Register** on September 30, 1993 (58 FR 51144). Before 1996, a category 2 species was one for which the Service had information that proposing as endangered or threatened may be appropriate but for which sufficient information was not currently available to support a proposed rule. Designation of category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596). This notice redefined candidates to include only species for which we have information needed to propose them for listing.

We previously considered *S. conocarpum* as a category 1 candidate species in the Notices of Review published on September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). Category 1 candidate species were species for which the Service had information to support a proposed rule to list them as endangered or threatened. We reclassified *S. conocarpum* to a category 2 candidate species in the Notice of Review published on September 30, 1993 (58 FR 51144), due to a lack of available

information on the species' distribution and abundance.

Summary of Factors Affecting the Species

Section 4 of the Act, and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. In making this finding, information regarding the status and threats to these species in relation to the five factors provided in section 4(a)(1) of the Act is summarized below. Listing determinations are made solely on the best scientific and commercial data available, taking into account any efforts being made by any State, private citizen, corporation, or foreign nation to protect the species. We have examined each of the five listing factors under the Act for their application to *A. eggersiana* and *S. conocarpum* as follows:

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Agave eggersiana: A. eggersiana is endemic to the island of St. Croix. Its status in the wild is uncertain, and all known individuals are cultivars planted as ornaments in several areas and facilities in St. Croix and St. Thomas (Proctor and Acevedo-Rodríguez 2005; P. Acevedo-Rodríguez, pers. comm. 2005; D. Plaskett, pers. comm. 2003; B. Kojis and R. Boulon, pers. comm. 1996; Britton and Wilson 1923). Acevedo-Rodríguez (pers. comm. 2002) believes that past land use history, as opposed to the current threat of development, is the likely cause of *A. eggersiana's* apparent small population numbers.

We believe that there is not sufficient information to evaluate the extent and imminence of threats and cannot conclude that *A. eggersiana* is threatened or endangered due to the destruction and curtailment of its habitat or range. To our knowledge, no systematic surveys for the species have ever been conducted to determine its true status.

Solanum conocarpum: The presence of *S. conocarpum* in the wild has been confirmed only on the island of St. John. When the species was petitioned for listing in 1996, only two individuals were known to exist in the wild (B. Kojis and R. Boulon, pers. comm. 1996). Acevedo-Rodríguez (1996) suggests that as a result of destruction of more than 90 percent of the natural vegetation in St. John, primarily due to cultivation in the first 130 years of colonization, some of the native and endemic plant species have become extinct or nearly extinct. For *S. conocarpum* specifically, P. Acevedo-Rodríguez, (pers. comm. 2002) believes that past land use history, as opposed to the current threat of development, was the likely cause of the species' apparent small population numbers. Furthermore, much of the island regenerated to varying degrees, including secondary successional forest (Woodbury and Weaver 1987; Acevedo-Rodríguez 1996).

At present, the species is known from almost 200 wild individuals in six locations. Of the six locations, three are on privately owned land, two are within VINP, and one occurs on both private and VINP land. At the site of the largest number of plants (Estate Concordia/VINP-area), the Service has been working with a private landowner and VINP to implement conservation measures for the species, to protect in perpetuity around 80 percent of the known population, and to expand the current propagation efforts to double existing population in the wild (400 to 500 individuals). Additionally, a portion of the private property where a large number of the plants in this area are found was recently donated to the VINP (R. Boulon, pers. comm. 2006). We do not have evidence suggesting that remaining localities under private ownership where *S. conocarpum* is found are under threat of development.

VINP manages for sensitive species, including *S. conocarpum*, within the park. VINP is currently working with the Service and an adjacent landowner in the development of conservation measures and recently accepted the donation of a portion of the private land into VINP ownership (R. Boulon, pers. comm. 2006). Additionally, VINP has a General Management Plan (GMP) that is in place and being implemented. One purpose of the GMP is to establish strategies and approaches to achieve and maintain desired conditions for the park's cultural and natural resources, including protecting native plants like *S. conocarpum* and their habitats.

While residential and tourism development may impact this species, we do not have information suggesting that these threats are occurring or are imminent. Furthermore, we do not know if the species now occurs on St. Thomas or the BVI. Therefore, we do not have sufficient information to conclude that *S. conocarpum* is either threatened or endangered due to the destruction and curtailment of its habitat or range.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The information available on the species does not suggest that overutilization for commercial, recreational, scientific, or educational purposes has contributed to the current status of either *A. eggersiana* or *S. conocarpum* or that any such activities are threats to these species.

Factor C: Disease or Predation

There have been no systematic studies to identify parasites or disease in these species. Therefore, the role of parasites or disease of *A. eggersiana* and *S. conocarpum* is unknown.

Feral pigs uproot juvenile plants and destroy the root system of other species of *Agave* on Mona Island, apparently to feed on or obtain moisture from the roots (J. Saliva, pers. obs. 1983, 1996). Theoretically, should *A. eggersiana* be reintroduced in the wild, it is possible that feral pigs could cause similar impacts, particularly to young plants.

Feral donkeys, pigs, and goats could directly and indirectly affect populations of *S. conocarpum* by uprooting and eating seedlings, destabilizing slopes, and dispersing exotic plant species, thus preventing or reducing sustainability of populations of *S. conocarpum*; however, the extent of such threats to the species is ''speculative'' (NPS 2003) and ''imprecise'' (NPS 2004). VINP is implementing reduction plans to control the populations of nonnative feral pigs, goats, and sheep within VINP (NPS 2003, 2004). Feral pig populations in VINP are low, and reduction efforts have been targeted to problem areas (NPS unpublished report. 2006). VINP believes some goats were removed from the park even before the reduction plan commenced, and that removal efforts by VINP were successful at two locations where there have been no reports of goats returning and vegetative growth has increased (NPS unpublished report 2006). Although vegetation trampling by donkeys has been observed at the Estate Concordia population of *S. conocarpum* (M. Carper, property owner, and J. Saliva, pers. obs., 2004), we do not have evidence to conclude that trampling has or would result in mortality of *S. conocarpum*.

No seedlings have been reported under mature *S. conocarpum* shrubs. Other than gravity, its fruit dispersal agent is unknown. Where shrub densities are high, hermit crabs have been observed feeding on the fruit (Ray 2005). Fruit and seed production in the largest known wild population of *S.*

conocarpum is reported as ''ample'' (Ray 2005). While hermit crabs consume fallen fruit in large quantities (Ray 2005), we do not know if the crabs act as seed predators (for example, by crushing seed embryos as they feed) and are partly responsible for the low seedling recruitment at this location.

At this time, there is no evidence that donkeys, pigs, or goats constitute a specific threat to *A. eggersiana* or *S. conocarpum* by feeding on young or adult, wild or reintroduced, individuals of these species. The effects of consumption of *S. conocarpum* fruits by hermit crabs are uncertain. Therefore, we believe that there is no substantial evidence indicating that either *A. eggersiana* or *S. conocarpum* is threatened or endangered due to disease or predation.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The Territory of the U.S. Virgin Islands currently considers *A. eggersiana* and *S. conocarpum* to be endangered under the Virgin Islands Indigenous and Endangered Species Act (V.I. Code, Title 12, Chapter 2), and has amended an existing regulation (Bill No. 18–0403) to protect endangered and threatened wildlife and plants by prohibiting the take, injury, or possession of indigenous plants.

The available information on the species does not suggest that inadequacy of current regulatory mechanisms has contributed to the current status of either *A. eggersiana* or *S. conocarpum* or that such mechanisms are current threats to these species.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

It appears that *A. eggersiana* may be extremely rare and its survival may be dependent on captive propagation and reintroduction. *A. eggersiana* is only found on the island of St. Croix, and it was last observed growing in the wild in the mid-1980s. Horticulturist M. Hays of the St. Georges Botanical Garden herbarium on St. Croix has propagated the species and distributed specimens to the public in the hope of ''saving the species from extinction'' (B. Kojis and R. Boulon, pers. comm.1996). The status of the species in the wild is uncertain, and its apparent limited abundance and distribution are likely the result of past land use history. However, as systematic surveys of suitable habitat for this species have never been conducted to our knowledge, we do not have enough information to determine the true status of this species in wild and therefore cannot conclude that the species is threatened or endangered due to other natural or manmade factors.

S. conocarpum is currently known from six locations on St. John. It is possible that the species may occur in St. Thomas or the BVI, or at other locations in St. John. However, no surveys have ever been conducted to our knowledge to determine if the species is present elsewhere. Using the best available scientific and commercial information, we are unable to determine that the small population size constitutes a threat or that it would render the species likely to become endangered or extinct in the near future. In the Caribbean, native plant species, particularly endemic species with limited distribution, may be vulnerable to natural or manmade events, such as hurricanes and human-induced fires. Fire is not a natural component of subtropical dry forest in Puerto Rico and the Virgin Islands. Thus, most species found in this type of forest are not fire-adapted. However, there is no information in the literature indicating that hurricanes or fires have affected the known populations of *S. conocarpum*. Furthermore, the VINP has a fire prevention plan which includes the protection of native species, including *S. conocarpum*. We do not have sufficient information to conclude that this species is threatened or endangered due to other natural or manmade factors.

Finding

We have carefully assessed the best scientific and commercial information available regarding threats faced by *Agave eggersiana* and *Solanum conocarpum*. We reviewed the petition, available published and unpublished scientific and commercial information, and consulted with recognized plant experts (including those most familiar with the species), and Territorial and other Federal resource agencies. We did not receive additional information from interested parties during the public comment period on our 90-day finding.

For us to make a ''warranted'' finding, the species must, at a minimum, meet the definition of a threatened species. In accordance with section 3(19) of the Act, a threatened species is one which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Based on all the information we have gathered and reviewed, we found no evidence that either *A. eggersiana* or *S. conocarpum* are threatened or endangered by overutilization for commercial, recreational, or educational purposes, nor by inadequacies in the existing regulatory mechanisms. We also have no data to show that destruction or curtailment of the species' habitat or range, disease or predation, or other natural or manmade factors threaten *A. eggersiana* or *S. conocarpum*. After reviewing the best available scientific and commercial information, we believe that we do not have sufficient information to determine the true status of either *Agave eggersiana* or *Solanum conocarpum* in the wild and cannot determine if either species meets the definition of threatened or endangered due to one or more of the five listing factors because we do not have sufficient evidence of which threats, if any, are operating on these species.

We will continue to monitor the status of these species and their habitats, and will accept additional information and comments at any time from all concerned governmental agencies, the scientific community, industry, and any other interested parties concerning this finding. This information will help us monitor and encourage beneficial measures for *A. eggersiana* and *S. conocarpum*.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Boquerón Field Office (see **ADDRESSES** section).

Author

The primary author of this document is the Boquerón Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 22, 2006.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–3095 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

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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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0022]

Availability of Environmental Assessment for a Proposed Field Trial of Genetically Engineered Bahiagrass

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed field trial using two transgenic grass lines. The trial consists of Argentine bahiagrass plants that are genetically engineered to express resistance to the herbicide glufosinate and resistance to the antibiotic kanamycin. Each of 4 sets of 12 genetically engineered bahiagrass plants will be encircled with a ring of several untransformed cultivars of bahiagrass. The purpose of the field trial is to study the likelihood of hybrid formation as a result of pollen movement from the transgenic plants to the nontransgenic plants. Data gained from this field experiment will also be used to evaluate current confinement practices for this species of transgenic grass. The environmental assessment is available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 6, 2006.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0022 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0022.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Beetham, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0664. To obtain copies of the environmental assessment, contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *Ingrid.E.Berlanger@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On October 21, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 05–294–02r) from the University of Florida in Marianna, FL, for a field trial using lines of transgenic Argentine bahiagrass. Permit application 05–294–02r describes two transgenic lines of Argentine bahiagrass, *Paspalum notatum* Flugge cv. Argentine:

• Line 'B9' has been genetically engineered to express the phosphinothricin acetyl transferase (bar) gene from *Streptomyces hygroscopicus,* which confers resistance to glufosinate herbicides. Expression of this gene is controlled by the polyubiquitin (*ubi*) promoter, *ubi* 5′ flanking region and the *ubi* first intron sequences from *Zea mays*, and the 35S 3′ region from Cauliflower Mosaic Virus (CaMV).

• In addition to the gene sequences above, line 'P' has also been genetically engineered to express the neomycin phosphotransferase gene (nptII) from *Escherichia coli,* which confers resistance to the antibiotic kanamycin. Expression of this gene is controlled by the enhanced 35S promoter from CaMV, heat shock protein 70 (HSP70) intron from *Zea mays,* and the 35S 3′ region from CaMV.

Constructs were inserted into the recipient organisms by microprojectile bombardment.

The subject transgenic grasses are considered regulated articles under the regulations in 7 CFR part 340 because they were created using donor sequences from plant pests. The purpose of this proposed introduction is for research on transgenic bahiagrass plants, particularly to investigate the frequency of cross-hybridization between transgenic Argentine bahiagrass with different bahiagrass cultivars under field conditions. Additionally, the data gathered during this study will be used to assess the confined status of this field release and refine the confinement conditions necessary for future releases of this grass species.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated

with the proposed release of these transgenic grasses, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 1st day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–3166 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0003]

Horse Protection; Public Meeting in Springfield, MO

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service's Animal Care program will host a meeting to present current information on the enforcement of the Horse Protection Act (HPA) and provide a forum for horse industry members and other interested persons to comment on the Horse Protection Program, development of the HPA Operating Plan for 2007 and beyond, and other Horse Protection matters. This notice provides the meeting's agenda, location, and date.

DATES: The meeting will be held from 1 p.m. to 5 p.m. on March 13, 2006. Registration will take place from 12:30 p.m. to 1 p.m.

ADDRESSES: The meeting will be held at the University Plaza Hotel and Convention Center, 333 South John Q Hammons Parkway, Springfield, MO 65806.

FOR FURTHER INFORMATION CONTACT: Mr. Darby G. Holladay, APHIS Legislative and Public Affairs, 4700 River Road Unit 51, Riverdale, MD 20737; (301) 734–3265.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS), Animal Care, is announcing a meeting to discuss the enforcement of the Horse Protection Act (HPA). This meeting is designed to provide a forum for information dissemination on current initiatives by Animal Care. Further, this meeting will provide the opportunity for industry members and other interested parties to provide suggestions for the HPA Operating Plan for 2007 and beyond and comments on other Horse Protection Program matters during the listening session period on the agenda. Each speaker will indicate at registration their intention to address the Deputy Administrator during the listening session and will be allotted a set amount of time. Additional meetings of this type are tentatively scheduled to occur on the following dates and times: April 19, 2006, in Dallas, TX; May 17, 2006, in Somerset, KY; June 12, 2006, in Pomona, CA; and September 11, 2006, in Chattanooga, TN. These meetings will be announced in future **Federal Register** notices.

The meeting will, with the exception of possible minor modifications, follow the agenda below:

12:30 p.m. to 1 p.m.—Registration.

1 p.m. to 1:15 p.m.—Welcome and Overview.

1:15 p.m. to 3 p.m.—Horse Protection Program Update.

3 p.m. to 4:45 p.m.—Listening Session.

4:45 p.m. to 5 p.m.—Remarks and Closing.

Meeting notices, copies of the Horse Protection Act, HPA regulations, the HPA Operating Plan for 2004–2006, and other relevant documents are available on the Animal Care Web site at *http://www.aphis.usda.gov/ac/hpainfo.html.*

Please note that this meeting is being held to provide for the exchange of information on the enforcement of the Horse Protection Act and is not an opportunity to submit formal comments on proposed rules or other regulatory initiatives. Written comments will be accepted and should be mailed to: USDA, APHIS, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737.

Done in Washington, DC, this 2nd day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–3169 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—FNS–543, National Hunger Clearinghouse Database Form

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 the Food and Nutrition Service (FNS) invites the general public and other public agencies to comment on this information collection on which FNS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 8, 2006.

ADDRESSES: 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 has 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 that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Pam Phillips, Director, Consumer and Community Affairs, Office of Communications and Governmental Affairs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 912, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Pam Phillips, (703) 305–2298. Copies of this information collection can be obtained from Gregory Walton at the address listed above.

SUPPLEMENTARY INFORMATION:

Title: National Hunger Clearinghouse Database Form.

OMB Number: 0584–0474.

Form Number: FNS–543.

Expiration Date: 7/31/2006.

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

Abstract: Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)), which was added to the Act by section 123 of Public Law 103–448 on November 2, 1994, mandated that FNS enter into a four-year contract with a non-governmental organization to establish and maintain an information clearinghouse (named ''USDA National Hunger Clearinghouse'' or ''Clearinghouse'') for groups that assist low-income individuals or communities regarding nutrition assistance programs or other assistance. Section 26(d) was amended by section 112 of Public Law 105–336 on October 31, 1998 to extend funding for the Clearinghouse (now called ''National Hunger Clearinghouse'' or ''Clearinghouse'') through fiscal year 2003. This Act was amended by section 128 of Public Law 108–265 on June 30, 2004, and provided increased funding for the Clearinghouse. FNS awarded this contract to the national hunger advocacy organization World Hunger Year (WHY) of New York, NY.

The Clearinghouse includes a database of non-governmental, grassroots programs that work in the areas of hunger and nutrition, as well as a mailing list of relevant local governmental agencies. Under the original contract, Clearinghouse staff established the database by reviewing relevant programs of organizations contained in several existing mailing lists. Program and mailing information about organizations culled from these lists were collected and entered into the database once each contract year (years one through four of the original contract and year one and two of the existing contract) through a series of electronically-processed survey questionnaires sent through the United States Postal Service. Clearinghouse staff followed up by phone or facsimile to ensure the highest possible return rate on the questionnaires. Surveys could also be completed on the World Wide Web. Returned surveys were scanned and data entered into the database. Survey questionnaires will continue to be sent out in the current contract. For this information collection, the following information was determined:

Estimate of the Burden: Public reporting burden for this collection of information is estimated to average five minutes for the survey (the survey includes one two-page instrument).

Respondents: The respondents are non-governmental organizations that have grassroots food and nutrition programs.

Estimated Number of Respondents: 1,750.

Estimated Number of Responses per Respondent: One response per respondent.

Estimated Total Annual Burden: 146 hours.

Dated: February 28, 2006.

Roberto Salazar,

Administrator.

[FR Doc. E6–3159 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2006

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2006. The maximum dollar award on zero-interest loans for FY 2006 is $740,000. The maximum dollar award on grants for FY 2006 is $300,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2005, and ending September 30, 2006. REDLG loans and grants are available to any electric or telecommunications cooperative eligible to receive guaranteed or direct loans under the Rural Electrification Act, and does not have any delinquent debt with the Federal Government that has not been resolved pursuant to 31 CFR 285.13. REDLG loans and grants are to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Todd S. Hubbell, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 690–2516, Fax: (202) 720–2213.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. A list of Rural Development State Offices follows:

District of Columbia

Rural Business-Cooperative Service, USDA, Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225. (202) 720–1400.

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683. (334) 279–3400/TTD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539. (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 N. First Avenue, Suite 206, Phoenix, AZ 85003–1706. (602) 280–8700/TTD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225. (501) 301–3200/TTD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169. (530) 792–5800/TTD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215. (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904. (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010. (352) 338–3400/TDD (352) 338–3450.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768. (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720. (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709. (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821. (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN

46278. (317) 290–3100/TDD (317) 290–3340.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309–2196. (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040. (785) 271–2700/ TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503. (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302. (318) 473–7920/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405. (207) 990–9160/ TTD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999. (413) 253–4300/TDD (413) 253–4318.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823. (517) 324–5100/TDD (517) 337–6795.

Minnesota

USDA Rural Development State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853. (651) 602–7800/ TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269. (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203. (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 900 Technology Blvd., Unit 1, Suite B, P. O. Box 850, Bozeman, MT 59771. (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508. (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910. (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054. (856) 787–7700/ TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street NE, Room 255, Albuquerque, NM 87109. (505) 761–4950/ TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541. (315) 477–6400/TDD (315) 477–477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609. (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser Avenue, P. O. Box 1737, Bismarck, ND 58502–1737. (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418. (614) 255–2500/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654. (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204–3222. (503) 414–3300/TDD (503) 414-3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996. (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, 654 Munoz Rivera Avenue, IBM Building, Suite 601, San Juan, Puerto Rico 00918–6106. (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201. (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350. (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084. (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501. (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138. (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602. (802) 828–6000/ TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229. (804) 287–1550/ TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715. (360) 704–7740.

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500. (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481. (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B Street, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006. (307) 261–6300/TDD (307) 233–6733.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2006 for zero-interest loans is $24,752,479, and the projected program level for grants is $10,000,000. Applying the specified 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in the maximum loan award of $740,000. Applying the specified 3.0 percent to the program level for grants results in an amount higher than $200,000. Therefore, the maximum grant award for FY 2006 will be $300,000. This notice will be amended should funding in excess of projected levels be received.

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Dated: February 23, 2006.

Jackie J. Gleason,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E6–3157 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: USDA Rural Development administers rural utilities programs through the Rural Utilities Service. USDA Rural Development announces additional Fiscal Year (FY) 2006 funding available through its Technical Assistance and Training Grant Program (TAT). An additional $500,000 in emergency funding will be made available, pursuant to the Secretary's determination of extreme need, to conduct Water Resource Studies in the states affected by hurricanes Katrina, Rita, and/or Wilma (Florida, Alabama, Mississippi, Louisiana, and Texas).

DATES: You may submit completed applications for the Water Resource Studies grant(s) from the date of announcement to 30 days after this announcement appears in the **Federal Register**.

ADDRESSES: You may obtain application guides and materials for the Water Resource Studies grants the following ways:

- The Internet at USDA Rural Development Web site: *http://www.usda.gov/rus/water/.*
- You may also request application guides and materials by contacting the USDA Rural Development, WEP at (202) 720–9586.

You may submit:

- Completed paper applications for Water Resource Studies grants to the USDA Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked ''Attention: Assistant Administrator, Water and Environmental Programs.''
- Electronic grant applications at *http://www.grants.gov/* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water Program Division, USDA Rural Development, telephone: (202) 690–3789, fax: (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service.

Funding Opportunity Title: Water Resource Studies Grants.

Announcement Type: Funding Level Announcement and Solicitation of Applications.

Authority: 7 U.S.C. 1926(a)(14); Pub.L. 109–97, 119 Stat. 2120.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.761.

Dates: You may submit completed application for a TAT grant from the date of announcement to 30 days after this announcement appears in the **Federal Register**.

Reminder of competitive grant application deadline: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than 30 days after this announcement appears in the Federal Register to be eligible for funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the Water Resource Studies Grants;
II. Award Information: Available funds, maximum amounts;
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility;
IV. Application and Submission Information: Where to get application materials; what constitutes a completed application; how and where to submit applications; deadlines; and, items that are eligible;
V. Application Review Information: Considerations and preferences; scoring criteria; review standards; and selection information;
VI. Award Administration Information: Award notice information and award recipient reporting requirements;
VII. Agency Contacts: Web, phone, fax, email, and contact name.

I. Funding Opportunity

Drinking water systems are basic and vital to both health and economic development. Hurricanes Katrina, Rita, and Wilma severely damaged water systems in the states of Florida, Alabama, Mississippi, Louisiana, and Texas. Without dependable water supply, rural communities in these states will not attract families and businesses to return and invest in the hurricane damaged communities.

USDA Rural Development supports the sound development of rural communities and the growth of our economy without endangering the environment. It provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need. The additional funding for Water Resource Studies will allow rural communities to better plan and secure dependable water supplies for rebuilding their community's health and economic development. Qualified private non-profit organizations may apply to receive a grant to conduct Water Resource Studies to evaluate sources of dependable water supplies for communities in the hurricane affected states.

II. Award Information

Available funds: $500,000 is available for Water Resource Study grants in FY 2006.

III. Eligibility Information

A. What are the basic eligibility requirements for applying?

The applying entity (Applicant) must:

1. Be a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

2. Be legally established and located within one of the following:

a. A state within the United States.

b. The District of Columbia.

c. The Commonwealth of Puerto Rico.

d. Insular possession of the United States.

3. Have the legal capacity and authority to carry out the grant purpose;

4. Have no delinquent debt to the Federal Government or no outstanding judgments to repay Federal debt.

B. What are the basic eligibility requirements for a project?

The project must be a Water Resource Study that will evaluate and recommend sources of dependable water supply that can be developed and used by rural communities in one or more of the hurricane affected states of Florida, Alabama, Mississippi, Louisiana, and Texas.

IV. Application and Submission Information

A. Where to get application Information

The grant application guide, copies of necessary forms and samples, and the Technical Assistance Grants regulation (7 CFR 1775) are available from these sources:

- The Internet: *http://www.usda.gov/rus/water/,*
- *http://www.grants.gov.* or,
- For paper copies of these materials: call (202) 720–9586.

1. You may file an application in either paper or electronic format. Whether you file a paper or an electronic application, you will need a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. You must provide your DUNS number on the SF–424, ''Application for Federal Assistance.''

To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1–866–705–5711 or access the Web site *http://www.dunandbradstreet.com.* You will need the following information when requesting a DUNS number:

a. Legal Name of the Applicant;

b. Headquarters name and address of the Applicant;

c. The names under which the Applicant is doing business (e.g. dba) or any other name(s) by which the Applicant is commonly recognized;

d. Physical address of the Applicant;

e. Mailing address (if separate from headquarters and/or physical address of the Applicant);

f. Telephone number;

g. Contact name and title;

h. Number of employees at the physical location.

2. Send or deliver paper applications via the U.S. Postal Service (USPS) or courier delivery services to the USDA Rural Development receipt point set forth below. Applications will not be accepted by fax or e-mail. For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date to the following address:

Assistant Administrator—Water and Environmental Programs, USDA Rural Development, 1400 Independence Avenue, SW., STOP 1548, Room 5145 South, Washington, DC 20250–1548. The application and any materials sent with it become Federal records by law and cannot be returned to you.

3. For electronic applications, you must file an electronic application at the Web site: *http://www.grants.gov.* You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will need a DUNS number to accomplish such registration and later access any of the services.

The CCR registers your organization, maintains your organizational information and allows Grants.gov to use it to verify your identity. You may register with CCR by calling the CCR Assistance Center at 1–888–227–2423 or you may register online at: *http://www.ccr.gov.*

The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov: *https://apply.grants.gov/OrcRegister.*

The registration processes may take several business days to complete. Follow the instructions at Grants.gov for registering and submitting an electronic application. Original signatures on electronically submitted documents may be requested at a later date.

B. What constitutes a completed application?

1. To be considered for assistance, you must be an eligible entity and must submit a complete application by the deadline date. You must consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.

2. Applicants must complete and submit the following forms to apply for a Water Resource Study grant:

(a) Standard Form 424, ''Application for Federal Assistance.''

(b) Standard Form 424A, ''Budget Information—Non-Construction Programs.''

(c) Standard Form 424B, ''Assurances—Non-Construction Programs.''

(d) Standard Form LLL, ''Disclosure of Lobbying Activity.''

(e) Form RD 400–1, ''Equal Opportunity Agreement.''

(f) Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).

3. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of how the proposed Water Resource Study will address the water supply needs of the study area. The proposal should contain:

a. A brief project overview. Explain the purpose of the project, how it relates to USDA Rural Development purposes, how the Applicant will carry out the project, what the project will produce, and who will direct it.

b. A statement describing the necessity of the project. Describe why the project is necessary. Describe how eligible rural communities will benefit from the study. Describe the service area. Address water needs of rural communities within the study area.

c. A statement of the study goals.. The statement should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the proposed Water Resource Study.

d. A project evaluation which must describe how the results will be evaluated, consistent with the study's objectives.

e. The following supplementary materials must be submitted:

(i) Evidence that the Applicant is legally recognized under state and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws under which the Applicant was established. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

(ii) A certified list of directors and officers with their respective terms.

(iii) Evidence of tax exempt status from the Internal Revenue Service.

(iv) Disclosure of debarment and suspension information required in accordance with 7 CFR 3017.335, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Department of Agriculture?'' It is

part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

(v). Identification of all of the Applicant's known workplaces including the actual address of buildings location within buildings; or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 7 CFR 3021.230. The section heading is ''How and when must I identify workplaces?'' It is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

(vi) The most recent audit of the Applicant.

V. Application Review Information

A. Within 30 days of receiving the application, USDA Rural Development will acknowledge receipt by letter to the Applicant. The application will be reviewed for completeness to determine if it contains all of the items required. If the application is incomplete or ineligible, it will be returned to the Applicant with an explanation.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in the next section.

C. All applications that are complete and eligible will be ranked competitively based on the following scoring criteria

Scoring criteria	Points
1. Degree of expertise	Up to 30 points.
2. Percentage of Applicant's contributions	Up to 20 points.
3. Needs Assessment: Extent that problems/issues are clearly defined and supported by data	Up to 15 points.
4. Goals/Objectives: Goals/objectives are clearly defined, are tied to need, and are measurable	Up to 15 points.
5. Extent to which the work plan clearly articulates a well thought-out approach to accomplishing objectives; and clearly defines those served by the study.	Up to 50 points.
6. Description of the service area, particularly the demographics of the rural communities being served (population and Median Household Income of the communities).	Up to 15 points.
7. Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with the expected project outcomes.	Up to 20 points.
8. Administrator's discretion	Up to 15 points.

VI. Award Administration Information

A. USDA Rural Development will rank all qualifying applications by their final score. Applications will be selected for funding based on the highest scores and the availability of funding for the Water Resource Studies grants. Each applicant will be notified in writing of the score its application receives.

B. In making a decision regarding an application, USDA Rural Development may determine that an application is:

1. Eligible and selected for funding,

2. Eligible but offered fewer funds than requested,

3. Eligible but not selected for funding, or

4. Ineligible for the grant.

C. In accordance with 7 CFR part 1900, subpart B, the Applicant generally has the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if the Applicant is denied funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, the Applicant may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/offices.htm* or by calling (703) 305–1166.

D. Applicants selected for funding (Grantees) will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the Grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF–270, payment will ordinarily be made within 30 days.

3. Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the appropriate USDA Rural Development official by written amendment to the grant agreement. Any change not approved may be cause for termination of the grant.

G. Project reporting.

1. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work is being accomplished within the established time periods, and other performance objectives are being achieved.

2. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

3. A final project performance report will be required with the last SF–269, due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

4. All multi-state Grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The Grantee will provide an audit report or financial statement(s) as follows:

1. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the end of the Grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the Grantee's statement of income and expense and balance sheet signed by an appropriate official of the Grantee. Financial statements will be submitted within 90 days after the Grantee's fiscal year.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/water.* The USDA Rural Development's Web site maintains up-to-date resources and contact information for the Technical Assistance Grants program.

B. Phone: (202) 720–9586.

C. Fax: (202) 690–0649.

D. E-mail: *anita.obrien@wdc.usda.gov.*

E. Main point of contact: Anita O'Brien, Loan Specialist, Water and Environmental Programs, Water Programs Division, USDA Rural Development.

Dated: February 24, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–3170 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Renewal.

SUMMARY: The U.S. Bureau of the Census (Census Bureau) is giving notice that the charter for the Census Advisory Committee of Professional Associations has been renewed.

FOR FURTHER INFORMATION CONTACT: Committee Liaison Officer Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233. Her telephone number is 301–763–2075, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, Title 41, Code of Federal Regulations, Part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committee of Professional Associations is in the public interest in connection with the performance of duties imposed by law on the Department of Commerce.

The Committee was established in January 1973 to obtain expertise relating to major programs, such as the decennial census of population and housing, the agriculture and economic censuses, current demographic and economic statistics programs, survey research, and marketing analysis. Meeting the standards set forth in Executive Order 12838, in that its charter is of compelling national interest and that other methods of obtaining public participation have been considered, the Committee was rechartered in March 2002 and again in February 2004.

The Committee will consist of a Chair and 35 other members with a substantial interest in the conduct and outcome of the Census Bureau's economic, demographic, decennial census, statistical research, and marketing programs. The Committee includes representatives from academia, private enterprise, professional associations, and nonprofit organizations, which are further diversified by business type, geographic area, and other variables.

The Committee will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act. Copies of the revised charter will be filed with the appropriate Committees of the Congress and with the Library of Congress.

Dated: March 1, 2006.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E6–3158 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–844, C–500–819)

Certain Lined Paper Products From India and Indonesia: Alignment of First Countervailing Duty Determination With Antidumping Duty Determination

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

EFFECTIVE DATE: March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords or Robert Copyak (India), and David Layton or David Neubacher (Indonesia) AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3146 or (202) 482–2209, and (202) 482–0371 or (202) 482–5823, respectively.

Background

On February 6, 2006, we completed the preliminary affirmative countervailing duty determinations pertaining to certain lined paper products from India and Indonesia. See Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances: Certain Lined Paper from India, 73 FR 7916 (February 15, 2006); and Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances, Certain Lined Paper from Indonesia, 71 FR 7524 (February 13, 2006). On February 17, 2006, the petitions submitted a letter requesting alignment of the final determination in these investigations with the final determination in the respective companion antidumping investigations. Therefore, in accordance with section 705(a)(1) the Tariff Act of 1930, as amended (the Act), we are aligning the final determination in these investigations with the final determinations in the antidumping duty investigations of lined paper products from India and Indonesia.

This notice is issued and published pursuant to section 705(a)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 06–2139 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–809

Certain Forged Stainless Steel Flanges From India; Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Echjay Forgings Ltd. (Echjay) and Paramount Forge (Paramount). The period of review (POR) covers February 1, 2004, through January 31, 2005. We preliminarily determine that Echjay did not sell subject merchandise at less than normal value (NV) in the United States during the POR. In addition, we preliminarily determine to apply an adverse facts available (AFA) rate to Paramount's sale.

We invite interested parties to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: March 7, 2006.

FOR FURTHER INFORMATION CONTACT: David Cordell (Echjay), Mark Flessner (Paramount), or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0408, (202) 482–6312, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994) (*Amended Final Determination*). On February 1, 2005, the Department published the *Notice of Opportunity to Request Administrative Review* for this order covering the POR. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 70 FR 5136 (February 1, 2005). In accordance with 19 CFR 351.213 (b)(2), Echjay, Hilton Forge, Paramount, and Viraj Group Ltd. (Viraj) requested that we conduct this administrative review. On March 23, 2005, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

On October 13, 2005, we extended the time limit for the preliminary results of this administrative review to February 28, 2006. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Rescission: Certain Forged Stainless Steel Flanges from India*, 70 FR 59719 (October 13, 2005).

Echjay

On March 31, 2005, the Department issued its initial questionnaire to Echjay. Echjay submitted its section A response on May 2, 2005, and its section B and C responses on May 12, 2005. The Department issued a supplemental questionnaire on August 5, 2005, to which Echjay responded on August 30, 2005. A second supplemental questionnaire was issued on October 27, 2005, and the Department received the response on November 18, 2005. The Department issued a third supplemental on November 10, 2005, to which Echjay responded (in two parts) on November 30, 2005, and December 1, 2005. A final supplemental was issued on December 19, 2005, and the response was received on January 4, 2006.

Paramount

The Department sent its questionnaires to Paramount on March 31, 2005. Paramount's response to the section A questionnaire was submitted May 4, 2005. Paramount's responses to sections B and C were submitted on May 18, 2005. A supplemental section A, B, and C questionnaire was sent to Paramount on August 5, 2005. Paramount submitted its response to the first supplemental section A, B, and C questionnaire on September 7, 2005. The Department issued on November 8, 2005, a second supplemental section A, B, and C questionnaire. Paramount submitted its response on November 29, 2005.

Scope of the order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Rescission of the Administrative Review

On April 18, 2005, respondents Viraj and Hilton Forge withdrew their requests for an administrative review. Pursuant to section 351.213(d)(1) of the Department's regulations, the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Section 351.213(d)(1) of the Department's regulations also states that the Secretary may extend this time limit if the Secretary decides it is reasonable to do so. The initiation notice for this review was published on March 23, 2005. Viraj and Hilton Forge withdrew their requests for review on April 18, 2005, which was within 90 days of the date of publication of the initiation notice of the review. No other party has requested a review of Viraj or Hilton Forge in the POR. Since the two parties which had requested administrative reviews have withdrawn their requests in a timely manner, we are rescinding the administrative reviews of Viraj and Hilton Forge. With respect to Hilton Forge, the Department will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) within 15 days of publication of this notice. With respect to Viraj, the Department has already issued liquidation instructions for this period as the order for Viraj was revoked on July 12, 2005. *See Stainless Steel Flanges From India: Notice of Final Results of Antidumping Duty Administrative Review and Revocation in Part*, 70 FR 39997 (July 12, 2005) and CBP message number 5227209.

Paramount

Use of Adverse Facts Available

In accordance with section 776(a)(2) of the Tariff Act of 1930, as amended (the Tariff Act), the Department has determined that the use of adverse facts available is appropriate for purposes of determining the preliminary dumping margin for the subject merchandise sold by Paramount. Pursuant to section 776(a)(2) of the Tariff Act the Department shall (with certain exceptions not applicable here) use the facts otherwise available in reaching applicable determinations under this subtitle if an interested party (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Tariff Act; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i). *See* Tariff Act section 776(a)(2). Moreover, section 776(b) of the Tariff Act provides, in relevant part, that:

> If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

Id.

The Department sent standard section A, B, and C questionnaires to Paramount on March 31, 2005. Paramount's response to the section A questionnaire was submitted May 4, 2005. Paramount's responses to sections B and C were submitted on May 18, 2005. The Department discovered dozens of serious deficiencies in all three of these responses. Therefore the Department sent a supplemental section A, B, and C questionnaire to Paramount on August 5, 2005. Paramount submitted its response to the first supplemental section A, B, and C questionnaire on September 7, 2005. More than half of the questions were unanswered. Of those questions to which Paramount did make some response, the Department again found that the majority were deficient. The Department accordingly issued on November 8, 2005, a second supplemental section A, B, and C questionnaire. Paramount submitted its response on November 29, 2005; this response was deficient as well.

Each of the questionnaires sent by the Department contained a warning that determinations on the basis of adverse facts available would be made if Paramount failed to comply. *See* ''Preliminary Results in the Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Total Adverse Facts Available and Corroboration Memorandum for Company Rate,'' February 28, 2006 (Corroboration Memorandum) at pages 1 and 2.

Paramount made one sale of subject flanges to the United States during the POR. Paramount reported that there were sales in the home market in its original response to the section A and B questionnaires. In reporting the sales quantity and value of its home market sales (*see* pages A–2 and A–19) Paramount reported a figure which was widely divergent from what was reported in its databases accompanying the supplemental section B questionnaire responses of September 7, 2005, and November 29, 2005. After extensive questioning by the Department directed specifically at this discrepancy between the reported quantity and value figures in the original and supplemental section A responses and the sales reported in the databases for the original and supplemental section B responses, it became clear that Paramount had reported in its section B databases less than one percent of its home market sales. In its response, Paramount admitted it was reporting ''on a sample basis to give insight of our working.'' *See* Paramount's November 29, 2005, response to second supplemental section A, B, and C questionnaire at page 2. Paramount also stated: ''We had provided you two bills consisting of eight transactions as samples. This does not reflect our total sales of the year.'' *See* Paramount's November 29, 2005, response to the Department's second supplemental section A, B, and C questionnaire at page 13.

It appears that Paramount has selectively reported certain transactions instead of reporting all of its sales in the home market as it was repeatedly instructed to do. Hence Paramount has withheld information requested by the Department, has failed to provide such information by the deadlines for submission of the information, has failed to provide such information in form and manner requested, and has significantly impeded this proceeding. With regard to the limited remainder of the information conveyed in Paramount's three sets of responses, the deficiencies are so prevalent and on such a scale that very little of the submitted data can be trusted as reliable. (For examples, *see* Corroboration Memorandum at pages 3 to 4.) We find that Paramount has failed to cooperate by not acting to the best of its ability to comply with this request for information from the Department. (For discussion of the ''acting to the best of its ability'' standard under section 776(b) of the Tariff Act, please *see* Corroboration Memorandum at pages 5–6.)

The Department preliminarily determines that Paramount's questionnaire responses cannot serve as the basis for the calculation of Paramount's margin. In the instant review, Paramount did not contend that it did not have pertinent records; rather, it admitted to furnishing only ''samples.'' By declining to provide the requested information, Paramount failed to cooperate to the best of its ability in that it did not put forth its maximum efforts to obtain the requested information from its records. Consequently, the Department finds that an adverse inference is warranted in determining an antidumping duty margin for Paramount. As a result, we are basing Paramount's margin on the facts otherwise available, in accordance with sections 776(a)(2)(A) – (C) and section 776(b) of the Tariff Act. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice From Brazil*, 71 FR 2183 (January 13, 2006). *See also Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909 (Feb. 23, 1998).

If the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. *See* section 776(b) of the Tariff Act. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action* (SAA) accompanying the Uruguay Round Agreement Act, H.R. Doc. No. 103–316 (1994), at 870. Under the statutory scheme, such adverse inferences may include reliance on: information derived from (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. See section 776(b) of the Tariff Act. The SAA authorizes the Department to consider the extent to which a party may benefit from its own lack of cooperation. Id. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce the respondents to provide the Department with complete and accurate information in a timely manner. *See Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55796 (Aug. 30, 2002). Because Paramount currently has the ''All Others'' cash deposit rate of 162.14

percent, the Department determines that assigning the highest margin from the original petition and investigation in this case, 210.00 percent, will prevent Paramount from benefitting from its failure to cooperate with the Department's requests for information. *See Amended Final Determination*. Furthermore, a lower rate would effectively reward Paramount for not cooperating by not acting to the best of its ability.

To assess the reliability of the petition margin in accordance with section 776(c) of the Tariff Act, to the extent practicable, we examined the key elements of the calculations of export price and normal value upon which the margins in the petition were based. (For discussion of ''reliance on secondary information,'' standard under section 776(c) of the Tariff Act, please *see* Corroboration Memorandum at pages 7–8.) The U.S. prices in the petition were based upon quotes to U.S. customers, most of which were obtained through market research. *See Petition for the Imposition of Antidumping Duties*, December 29, 1993. The Department was able to corroborate the U.S. prices in the petition, which were used as the basis of the 210.00 percent rate (based on the highest rate in the original petition and antidumping duty order) by comparing these prices to publicly available information based on IM–145 import statistics from the U.S. International Trade Commission's Web site via Dataweb for HTS numbers 7307215000 and 7307211000. The weighted average reported CBP unit value for these products in calendar year 2004, which overlaps eleven months of the POR, was $4.83/kg. This value approximates those cited in the petition, which ranged from $4.77 to $47.32, thus corroborating the petition's U.S. price. The NVs in the petition were based on actual price quotations obtained through market research. At present, the Department is not aware of other independent sources of information at its disposal which would enable it to corroborate the margin calculations in the petition further.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances which would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Further, in accordance with *F. LII De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027 (Fed. Cir. June 16, 2000), we also examine whether information on the record would support the selected rates as reasonable facts available.

The Department finds the 210 percent rate used in these preliminary results has probative value. (*Note*: The consideration of the probative value relies upon information which is business proprietary and covered by an Administrative Protection Order; for a full discussion, *see* Corroboration Memorandum under the heading ''Specifics on Corroboration of Rate from Investigation.'') The Department is not aware of any circumstances which would render this rate inappropriate. In fact, other Indian manufacturers currently have a 210 percent margin under this order.

The implementing regulation for section 776 of the Tariff Act, codified at 19 CFR 351.308(d), states, ''[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' Additionally, the SAA at 870 states specifically that, where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on the Department's efforts described above to corroborate information contained in the petition, and in accordance with 776(c) of the Tariff Act which discusses facts available and corroboration, the Department considers the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination. *See Certain Cut–to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999).

Echjay

Affiliation

Pursuant to section 771(33)(A) of the Tariff Act, the following persons, among others, are affiliated: ''members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. . . .'' *See* section 771(33)(A) of the Tariff Act). The record shows the board members (and managers) of Echjay Industries and Echjay are descendants of a common progenitor, the late Harilal Jechand Doshi. They are related as the uncle and nephews (and as first cousins). Accordingly, consistent with the definition of ''family'' under section 771(33)(A) of the Tariff Act, the Department's prior practice, and the controlling precedent, (*see Ferro Union Inc. v. Wheatland Tube Co.*, 44 F. Supp. 2d 1310, 1324 (Ct. Int'l Trade 1999) (*Ferro Union Inc.*)), the Department preliminarily determines that the board members and managers of Echjay Industries and those of Echjay constitute the Doshi family. *See* Memorandum on Relationship of Echjay Forgings (Echjay) and Echjay Industries in the 2004–2005 Administrative Review of AD Order on Certain Forged Stainless Steel Flanges From India, dated February 28, 2006, which accompanies this notice (Affiliation Memorandum).

Section 771(33)(F) of the Tariff Act defines affiliates as ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.'' The statutory definition states that ''control'' exists where one person ''is legally or operationally in a position to exercise restraint or direction over the other person.'' The record shows the Doshi family controls the boards of directors of Echjay and Echjay Industries because these boards comprise the members of the Doshi family. Accordingly, the Doshi family is legally and operationally in a position to exercise restraint or direction over both Echjay and Echjay Industries. Based on the particular facts of this case, we preliminarily find there is sufficient evidence of the record to find Echjay and Echjay Industries affiliated by virtue of common control of the Doshi family. *See* sections 771(33)(A) and (F) of the Tariff Act. *See also* Affiliation Memorandum.

Collapsing

Section 351.401(f)(1) of the Department's regulations states that in an antidumping proceeding the Department ''will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.''

Section 351.401(f)(2) of the Department's regulations identifies factors to be considered to determine whether there is a significant potential for manipulation. These include: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

As discussed above and in the accompanying Affiliation Memorandum, based on the evidence on the record in this review, we have preliminarily determined that Echjay is affiliated with Echjay Industries by virtue of common control by the Doshi family. *See* sections 771(33)(A) and (F) of the Tariff Act. Accordingly, the Department preliminarily determines that the first of the three requirements for collapsing the companies has been met.

Having determined that the two companies are affiliated, the Department examines whether the producers have production facilities for similar or identical products that would not require ''substantial retooling ... in order to restructure manufacturing priorities.'' *See Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta From Italy*, 69 FR 319 (January 5, 2004). Based on Echjay's questionnaire responses, the Department has preliminarily determined that the two companies' production facilities would require substantial retooling to restructure manufacturing priorities. *See* Affiliation Memorandum.

Further, based on the record of this proceeding, the Department preliminarily determines that significant potential for manipulation does not exist. The third factor of the Department's collapsing analysis, *i.e.*, the significant potential for manipulation, requires consideration of three sub–factors: (1) the level of common ownership; (2) the extent to which managerial employees or directors of one firm also sit on the board of the other firm; and (3) whether operations are intertwined. *See* 19 C.F.R. 351.401(f)(2). The Department preliminarily determines that none of these factors have been satisfied in this segment of the proceeding. *See* Affiliation Memorandum for a full discussion of the issues.

Because two of the three factors in the collapsing analysis have not been satisfied, the Department has preliminarily determined not to collapse Echjay and Echjay Industries in this segment of the proceeding pursuant to section 351.401(f)(1)(2) of the Department's regulations. *See* Affiliation Memorandum.

Universe of Sales

The universe of U.S. sales reported to the Department includes constructed export price (CEP) sales with entry dates outside of the POR. Consistent with the Department's practice and the antidumping duty questionnaire, the Department bases its analysis on ''each U.S. sale of merchandise entered for consumption during the POR, except ... for CEP sales made after importation'' where the Department will base its analysis on ''each transaction that has a date of sale within the POR.'' *See* Department's questionnaire issued to Echjay, dated March 31, 2005, at C–1; *see also Certain Hot–Rolled Carbon Steel Flat Products from the Netherlands* and the accompanying unpublished Issues and Decisions Memorandum at comment 10, 69 FR 33630 (June 16, 2004); *see also Circular Welded Non–Alloy Steel Pipe from the Republic of Korea*, 63 FR 39071 (July 21, 1998). Because all sales made by Echjay to the United States are back–to-back CEP sales (*i.e.*, the sales were made prior to importation and the merchandise was shipped directly to unaffiliated customers in the United States), the Department will only use entries of subject merchandise made during the POR. Because a small number of these sales were examined last year, the Department has excluded those sales which were entered in this POR but reviewed in the last POR. *See* Analysis Memorandum, dated February 28, 2006, which accompanies this notice for more details (Analysis Memorandum).

Date of Sale

In determining the appropriate date of sale, the Department normally uses the date of invoice as the date of sale. *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087 (CIT 2001). Moreover, the preamble to the Department's regulations expresses a strong preference for the Department to choose a single date of sale across the full period of review. *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997). For these preliminary results, the Department will use the invoice date as the appropriate date of sale for the POR, because this date best represents the date upon which the material terms of sale are set.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States by Echjay were made at less than NV, we compared the export price (EP) or constructed export price (CEP), as appropriate, to the NV (as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below.) In accordance with section 777A(d)(2) of the Tariff Act, the Department calculated monthly weighted–average prices for NV and compared these to the prices of individual EP or CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, the Department considered all products described by the Scope of the Order section, above, produced and sold by Echjay in the home market to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. Where there were no sales of identical or similar merchandise in the home market suitable for comparing to U.S. sales, the Department compared these sales to constructed value (CV), pursuant to section 773(a)(4) and 773(e) of the Tariff Act.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Tariff Act, EP is defined as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Tariff Act. In accordance with section 772(b) of the Tariff Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

Based on the record evidence, the Department preliminarily determines

that Echjay's U.S. sales, all of which were through its U.S. affiliate Echjay U.S.A., Inc., were made in the United States within the meaning of section 772(b) of the Tariff Act and thus are properly classified as CEP sales.

The Department calculated CEP based on the prices charged to the first unaffiliated customer in the United States. The Department based CEP on the packed C&F, CIF duty paid, FOB, or ex–dock duty paid prices to the first unaffiliated purchasers in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance as required. The Department also deducted those selling expenses incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, bank commissions and charges, documentation fees, *etc.*), and imputed credit. In accordance with section 772(d)(3) of the Tariff Act, the Department deducted an amount for profit allocated to the expenses deducted pursuant to sections 772(d)(1) and (2) of the Tariff Act. *See* Analysis Memorandum for more details.

Duty Drawback

Section 772(c)(1)(B) of the Tariff Act provides that EP or CEP shall be increased by ''the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.'' The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that there is (i) a sufficient link between the import duty and the rebate, and (ii) sufficient imports of the imported material inputs to account for the duty drawback received for the export of the manufactured product (the so–called ''two–prong test''). *See Rajinder Pipes, Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999).

Echjay claimed it received Duty Entitlement Pass Book (DEPB) certificates from the Indian government which it books in an ''Export Incentives Ledger.'' *See* Echjay's Section C Response at Annexure H. According to Echjay, these DEPB certificates, awarded based on the FOB value of the shipment, are intended to offset import duties on raw materials ''and also to nullify the incidence of interest rates higher than international rates, high indigenous cost of electricity and fuels, and local taxes which are built into the cost of locally produced and sold steel.'' *Id.* Echjay contends it ''sold'' all of its DEPB certificates for which it was claiming a duty drawback adjustment. *See* Echjay's August 30, 2005, Supplemental Response at page 23. Echjay did not provide the Department with any documents supporting its contention.

The Department finds that Echjay has not provided substantial evidence on the record to meet the requirement of the first prong of the two–prong test, to wit, to establish the necessary link between the import duty and the reported rebate for duty drawback. Even if Echjay provided evidence demonstrating that it received duty drawback in the form of certificates issued by the Government of India, Echjay has failed to establish the necessary direct link between the import duty paid and the rebate given by the Government of India. Echjay's response suggests that much of the DEPB certificate program has no bearing on home market import duties of any kind. Finally, the Department notes the value of the DEPB certificates is normally calculated based upon the FOB prices of the finished goods, as exported. All of these factors demonstrate that there is no direct link between these certificates, the company's own imports of inputs, and the eventual production of finished goods for export. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

Normal Value

In determining NV, the statute requires the Department to determine the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price. In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR), the Department compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. The Department found no reason to determine that quantity was not the appropriate basis for these comparisons, so value was not used. *See* section 773(a)(1)(C) of the Tariff Act; *see also* 19 CFR 351.404(b)(2). Therefore, the Department based NV on home market sales to unaffiliated purchasers made in the usual quantities and in the ordinary course of trade.

The Department based its comparisons of the volume of U.S. sales to the volume of home market and third country sales on reported stainless steel flange weight, rather than on number of pieces. The record demonstrates that there can be large differences between the weight (and corresponding cost and price) of stainless steel flanges based on relative sizes, so comparisons of aggregate data would be distorted for these products if volume comparisons were based on the number of pieces.

Price-to-Price Comparisons

The statue requires the Department to determine whether subject merchandise is being, or is likely to be, sold at less than fair value by making a fair comparison between the EP or CEP and NV. For Echjay, the Department compared U.S. sales with contemporaneous sales of the foreign like product in India. As noted, the Department considered stainless steel flanges identical based on the following five criteria: grade; type; size; pressure rating; and finish. The Department used a 20 percent difference–in-merchandise (difmer) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and comparison market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product. The Department made adjustments for differences in packing costs between the two markets and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. The Department adjusted for differences in the circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. Finally, the Department made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred in the home market or United States where commissions were granted on sales in one market but not in the other (the ''commission offset'').

Constructed Value

In accordance with section 773(a)(4) of the Tariff Act, the Department based NV on CV if the Department was unable to find a contemporaneous comparison market match for the U.S. sale. The Department calculated CV based on the cost of materials and fabrication employed in producing the subject

merchandise, SG&A, and profit. In accordance with 772(e)(2)(A) of the Tariff Act, the Department based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, the Department used the weighted–average comparison market selling expenses. Where appropriate, the Department made COS adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 351.410. For comparisons to EP, the Department made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, the Department determines NV based on sales in the home market at the same level of trade (LOT) as EP or the CEP. The NV LOT is that of the starting–price sales in the home market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act.

To determine whether NV sales are at a different LOT than EP or CEP, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, the Department makes a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, the Department adjusts NV under section 773(a)(7)(B) of the Tariff Act (the CEP–offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

In implementing these principles in this review, the Department obtained information from Echjay about the marketing stages involved in its U.S. and home market sales, including a description of the selling activities in the respective markets. In identifying levels of trade for CEP, the Department considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Tariff Act. *See Micron Technology v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports differences in levels of trade, the functions and activities should be dissimilar.

Echjay reported one channel of distribution and one LOT in the home market, contending that home market sales to distributors and wholesalers were made at the same level of trade and involved the same selling activities. *See* Echjay's Section A Response at 13–15. In fact, all merchandise was sold in the home market on *ex works* terms. *See*, *e.g.*, Echjay's Section B Response at 7. After examining the record evidence provided, the Department preliminarily determines that for Echjay, a single LOT exists in the home market.

As to CEP sales, in Echjay's Section A Response it indicated that its U.S. subsidiary, Echjay USA, Inc., performed no selling activities or services beyond notifying the final customer of the merchandise's arrival at the U.S. port; customers were responsible for arranging shipment and CBP clearance at their own expense. *See* Echjay's Section A Response at 7. Echjay further asserts that selling activities remain the same regardless of customer or geographical location. *See* Echjay's Section A Response at 17.

The record evidence supports a finding that in both markets and in all channels of distribution, Echjay performs essentially the same level of services. These include order processing, packing, shipping and invoicing of sales, and processing of payments. Based on our analysis of the selling functions performed on CEP sales in the United States and of sales in the home market, the Department determines that the CEP and the starting price of home market sales represent the same stage in the marketing process and are thus at the same LOT. Accordingly, the Department preliminarily finds that no level of trade adjustment or CEP offset is appropriate for Echjay.

Currency Conversions

The Department made currency conversions into U.S. dollars in accordance with section 773(a) of the Tariff Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank of the United States.

Preliminary Results of Review

As a result of our review the Department preliminarily finds the following weighted–average dumping margins exist for the period February 1, 2004, through January 31, 2005:

Manufacturer / Exporter	Margin (percent)
Echjay Forgings, Ltd	0.38
Paramount Forge	210.00

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of the preliminary results. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Pursuant to 19 CFR 309(d), rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 5 days after the time limit for filing the case briefs. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests parties submitting written comments to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon issuance of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department has calculated importer–specific *ad valorem* assessment rates based on the total amount of antidumping duties calculated for the examined sales made during the POR divided by the total entered value, or quantity (in kilograms), as appropriate, of the

examined sales. Upon completion of this review, where the assessment rate is above *de minimis* (*i.e.*, at or above 0.50 percent) the Department will instruct CBP to assess duties on all entries of subject merchandise by that importer. *See* 19 CFR 351.106(c)(1).

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be the rates established in the final results of administrative review; if the rate for a particular company is zero or *de minimis* (*i.e.*, less than 0.50 percent), no cash deposit will be required for that company; (2) for manufacturers or exporters not covered in this review, but covered in the original less–than-fair–value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company–specific rate; (3) if the exporter is not a firm covered in this review, a prior review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for that manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 162.14 percent, the ''all others'' rate established in the LTFV investigation. *See Amended Final Determination*. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–3173 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Certain Individually Quick Frozen Red Raspberries From Chile: Notice of Extension of Time Limit for 2004–2005 Administration Review

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

EFFECTIVE DATE: March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Devta Ohri or Andrew McAllister, AD/CVD Operations, Office 1 Import Administration, International Trade Administration, U.S. Department of Commerce, 14 Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3853 or (202) 482–1174, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On August 29, 2005, the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile, covering the period July 1, 2004, through June 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part 70 FR 51009 (August 29, 2005).* The preliminary results for this administration review are currently due no later than April 2, 2006.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review, analyze, and verify the sales and cost information submitted by the parties in this administrative review. Moreover, the Department requires additional time to analyze complex issues related to produce and supplier relationships, issues additional supplemental questionnaires and fully analyze the responses. Thus, it is not practicable to complete this review within the original time limit (*i.e.,* April 2, 2006). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than June 13, 2006, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 06, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–2140 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–818

Low Enriched Uranium from France: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on Low Enriched Uranium (LEU) from France in response to requests by USEC Inc. and the United States Enrichment Corporation (collectively, petitioners) and by Eurodif, S.A.(Eurodif), Compagnie Générale Des Matières Nucléaires (COGEMA) and COGEMA, Inc. (collectively, Eurodif/COGEMA or the respondent). This review covers sales of subject merchandise to the United States during the period February 1, 2004 through January 31, 2005.

We preliminarily determine that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to

comment on these preliminary results. *See* the *Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department published the antidumping duty order on LEU from France in the **Federal Register** (67 FR 6680). On February 1, 2005, the Department published a notice of opportunity to request an administrative review of this order (70 FR 5136). On February 1, 2005 and February 25, 2005, the Department received timely requests for review from Eurodif/COGEMA and from petitioners, respectively. On March 23, 2005, we published a notice initiating an administrative review of the antidumping order on LEU from France covering one respondent, Eurodif/COGEMA. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

The Department issued its original questionnaire, sections A through C, on May 2, 2005, and received timely responses. On September 29, 2005, the Department extended the deadline for the preliminary results of this antidumping duty administrative review until February 28, 2006. *See Low Enriched Uranium from France; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 70 FR 58381 (October 6, 2005). On October 11, 2005, the Department issued a section D and supplemental sections A through C questionnaire and received timely responses, after granting deadline extensions, on December 8, 2005. The Department issued further supplemental questionnaires on January 12, 2006 and February 3, 2006 and received timely responses.

On January 25, 2006, pursuant to an allegation filed by petitioners, the Department initiated an investigation to determine whether Eurodif/COGEMA's purchases of electricity from Électricité de France (EdF), an affiliated supplier, during the period of review (POR), were made at prices below the cost of production (COP). The Department also issued a questionnaire[1] to obtain EdF's COP for electricity on the same date and received a timely response on February 6, 2006. For purposes of these preliminary results the Department has used the information reported for EdF. However, the Department may solicit some clarifying information from respondent regarding EdF's COP after the issuance of the preliminary results, and we will take such information into account in its cost calculation for the final results of this review.

Period of Review

This review covers the period February 1, 2004, through January 31, 2005.

Scope of the Order

The product covered by this order is all low enriched uranium. LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down–blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end–user and imported into the United States by or for such end–user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end–user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re–exported within eighteen (18) months of entry of the LEU for consumption by the end–user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis

Home Market Viability

In accordance with sections 773(a)(1)(B) and (C) of the Tariff Act of 1930, as amended (the Act), to determine whether there was a sufficient volume of sales in the home market and/or in third country markets to serve as a viable basis for calculating NV, we compared Eurodif/COGEMA's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act and section 351.404 (b) of the Department's regulations, because Eurodif/COGEMA's home market sales were greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determine the home market to be viable. However, because all sales were to a single affiliated customer and the Department was unable to confirm these sales to be at arm's length, we have used constructed value (CV) as NV, for purposes of these preliminary results. We have consistently used CV as the basis for NV in past segments of this proceeding, *see*, e.g. *Notice of Preliminary Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 3883 (January 27, 2004).

Fair Value Comparisons

To determine whether sales of LEU from France were made in the United States at less–than-fair value (LTFV), we compared the CEP to CV, as described in the *Constructed Export Price* and

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Calculation of Normal Value Based on Constructed Value sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated CEPs and compared them to CV.

We note that during the POR, the respondent sold LEU in the United States pursuant to contracts in which the respondent undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent to the amount used to produce the LEU shipped under contracts referred to as separative work unit (SWU)[2] contracts. However, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts into an LEU basis, increasing those values to account for the cost of the uranium feedstock involved. These adjustments are described in greater detail below.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. During the POR, Eurodif/COGEMA's U.S. sales were made to its U.S. affiliate, COGEMA Inc., which then resold the merchandise to unaffiliated customers. Therefore, Eurodif/COGEMA classified all of its U.S. export sales of LEU as CEP sales.

As stated in section 351.401(i) of the Department's regulations, the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the material terms of sale. In this review, we find that the material terms of sale are established by the contract between COGEMA Inc. and the U.S. customer. Therefore, as in prior reviews, we have used the contract date as the date of sale. *See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 54359 (September 14, 2005).

The Department calculated CEP for Eurodif/COGEMA based on packed prices to the first unaffiliated customer in the United States. For all sales involving payments on a SWU basis, we translated the prices to an LEU basis, as indicated above, by adding a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's reported entered value of feed, which was based on publicly available information used for customs entry purposes. We made deductions from the starting price, net of discounts, for movement expenses (foreign and U.S. movement expenses, expenses associated with shipment of sample assays, and movement of customer feed from North America to France, marine insurance, merchandise processing and U.S. harbor maintenance fees, and brokerage) in accordance with section 772(c)(2) of the Act and section 351.401(e) of the Department's regulations. In addition, in accordance with section 772(d)(1) of the Act, we also deducted credit expenses and indirect selling expenses, including inventory carrying costs, incurred in the United States and France and associated with economic activities in the United States.

Furthermore, in accordance with sections 772(d)(3) and 772(f) of the Act, we made a deduction for CEP profit. The CEP profit rate is normally calculated on the basis of total revenue and total expenses related to sales in the comparison market and the U.S. market. In this case, all home market sales were to an affiliate; consequently, we based CEP profit on the costs and revenues reported for AREVA's front end division, which is COGEMA's parent company and represents the highest level of consolidation for Eurodif. *See* CV section below and Memorandum to the File from Mark Hoadley and Myrna Lobo, ''Analysis of Eurodif/COGEMA for the Preliminary Results of the Third Administrative Review of Low Enriched Uranium (LEU) from France,'' dated February 28, 2006 (*Prelim Analysis Memo*).

Calculation of Normal Value Based on Constructed Value

Section 773(e) of the Act provides that CV shall be based on the sum of the costs of materials and fabrication of the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. In accordance with section 773(e)(2)(B)(iii) of the Act, we based general and administrative (G&A) expenses on amounts derived from Eurodif's financial statements. In our calculation of the interest expense, we based financial expenses on the financial statements of AREVA. For selling expenses, we used information on indirect selling expenses in third countries provided in the questionnaire response. Where appropriate, we made circumstance of sale (COS) adjustments to CV, in accordance with section 773(a)(8) of the Act and section 351.410 of the Department's regulations.

Electricity is considered a major input in the production of LEU. Eurodif obtained electricity from its affiliated supplier, EdF. On December 19, 2005, petitioners alleged that Eurodif purchased electricity from EdF at prices less than the affiliated suppliers' COP during the POR. After reviewing petitioners' major input allegation, the Department determined that it provided a reasonable basis on which to initiate an investigation of Eurodif's purchases of electricity from EdF. *See* Memorandum from Mark Hoadley to Barbara E. Tillman, Director, Office 6, ''Antidumping Duty Administrative Review of Low Enriched Uranium from France (2/1/04–1/31/05), Petitioners' Allegation of Purchases of a Major Input From Electricité de France (EdF), an Affiliated Party, at Prices Below the Affiliated Party's Cost of Production,'' dated January 25, 2006.

Section 773(f)(3) of the Act states that ''{i}f, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).'' In applying the major input rule under section 351.407(b) of the Department's regulations, the Department will normally compare the transfer price between affiliates to the market price for the input to ensure that the transfer price is at least reflective of the market price. For major inputs, the Department then compares the transfer price and the market price to the COP to ensure that the transfer price charged recovers the producer's costs of production. We evaluated the affiliated supplier's reported electricity COP accordingly.

On January 25, 2006, the Department solicited information from the respondent regarding the calculation of EdF's COP. Based on the response received on February 6, 2006, we have calculated the average cost of electricity for EdF. For details on calculations of

[2] A SWU is a unit of measurement of the effort required to separate the U235 and U238 atoms in uranium feed in order to create a final product richer in U235 atoms.

EdF's cost of electricity *see Prelim Analysis Memo*. Because the calculated COP for electricity exceeded the transfer price Eurodif paid to EdF for the electricity purchased, we calculated CV based on EdF's COP for electricity, in accordance with section 773(f)(3) of the Act.

In addition, the Department requested that Eurodif/COGEMA provide details on certain research and development (R&D) projects undertaken by its affiliate, the Commissariat à l'Energie Atomique (CEA). Because Eurodif/COGEMA did not provide the requested information and the Department does not have any data on the record regarding CEA's R&D expenditures, we must rely on secondary information. As facts available and pursuant to sections 776(a) and (c) of the Act, we are relying on USEC's R&D expenditures on centrifuge technology as a surrogate for CEA's R&D expenditure because it is the only information on the record relating to R&D. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. The *Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316 (SAA)*, at 870 (1994), explains that the word ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. Because USEC's R&D appears to be for the very same technology and it is conducted by a company in the same industry, we consider the information relevant and corroborated. We have therefore added an amount for R&D based on an average of USEC's costs over five years as done in the previous review. *See Issues and Decision Memorandum for Final Results of the Administrative Review of the Antidumping Duty Order on Low Enriched Uranium from France (2003–2004)* dated September 6, 2005, at Comment 7.

In addition to the adjustments described above, in calculating CV we recalculated the reported defluorination cost. For a full discussion of the adjustments in calculating CV *see Prelim Analysis Memo*.

We calculated profit in accordance with section 773(e)(2)(B)(iii) of the Act as explained in the SAA at 841. We used a CV profit rate based on AREVA's front end division as reported by respondent. *See Prelim Analysis Memo*.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter	Margin (percent)
Eurodif/COGEMA	7.70

Duty Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Liquidation of the entries of LEU under review remains enjoined; however, if the injunction is lifted, the Department will promptly issue appropriate assessment instructions directly to CBP.

Cash Deposit Requirements

The following cash deposit rates will be effective with respect to all shipments of LEU from France entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) For Eurodif/COGEMA, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the ''all other'' rate established in the LTFV investigation, which is 19.95 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Low Enriched Uranium from France*, 67 FR 6680 (February 13, 2002). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310 (c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended. *See* section 351.213(h) of the Department's regulations.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–3176 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–810)

Stainless Steel Bar from India: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2004, through January 31, 2005. This review covers imports of stainless steel bar from two producers/exporters.

We preliminarily find that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce (the ''Department'') published in the **Federal Register** the antidumping duty order on stainless steel bar (''SSB'') from India. See Antidumping Duty Orders: Stainless Steel Bar form Brazil, India and Japan, 60 FR 9661 (February 21, 2005).

On February 1, 2005, the Department published a notice in the **Federal Register** providing an opportunity for interested parties to request an administrative review of the antidumping duty order on SSB from India for the period of review (''POR''), February 1, 2004, through January 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 5136 (February 1, 2005). On February 22, 2005, we received a timely request for review from Shah Alloys, Ltd. (''Shah'').[1] On February 25, 2005, we received a timely request for review and revocation from Venus Wire Industries Pvt., Ltd. (''Venus''). On February 28, 2005, we received timely review requests from Ferro Alloys Corporation, Ltd. (''Facor''), Chandan Steel, Ltd. (''Chandan''), Isibars Ltd. (''Isibars''), Mukand Ltd. (''Mukand''), and the Viraj Group (''Viraj'').[2] On February 28, 2005, Carpenter Technology Corporation, Electralloy Corporation, and Crucible Specialty Metals Division, Crucible Materials Corporation (collectively, the ''petitioners'') also requested an administrative review of Viraj.

On March 23, 2005, the Department initiated an administrative review of the antidumping duty order on SSB from India with respect to Facor, Chandan, Isibars, Mukand, and Venus (collectively, the ''respondents''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

On March 29, 2005, the Department issued antidumping duty questionnaires to the respondents. On April 18, 2005, Isibars, Mukand, and Venus, withdrew their requests for an administrative review. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

On May 4, and May 31, 2005, we received responses to section A and sections B–D of the Department's antidumping duty questionnaire, respectively, from Facor. On June 9, 2005, and October 5, 2005, the Department issued supplemental questionnaires to Facor requesting additional information on Facor's U.S. sales process and date of sale. On June 16, 2005, and October 19, 2005, Facor filed its responses to the Department's supplemental questionnaires. On June 21, 2005, the petitioners requested that the Department conduct verifications of Facor and Chandan.

Based on Facor's submissions, the Department learned that Facor had no entries of the subject merchandise during the POR. To confirm that Facor made no entries of subject merchandise during the POR, the Department requested data from U.S. Customs and Border Protection (''CBP'') on July 26, 2005. CBP provided the Department with the requested data on September 8, 2005. *See* Memorandum to the File, ''*U.S. Customs and Border Protection Data*,'' dated September 26, 2005, which is on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building. On November 22, 2005, the Department published in the **Federal Register** a notice of intent to rescind the antidumping duty administrative review with respect to Facor. *See Stainless Steel Bar from India: Notice of Intent to Rescind Antidumping Duty Administrative Review of Ferro Alloys Corporation Limited*, 70 FR 70582 (November 22, 2005).

In May 2005, we received responses to sections A, B, and C of the Department's antidumping duty questionnaire from Chandan. On June 13, 2005, in accordance with 19 CFR 351.301(d)(2)(ii), the petitioners made a timely allegation that Chandan's home market sales were made below the cost of production (''COP''). On September 6, 2005, we determined that the Department's application of total adverse facts available (''AFA'') to the sales made by Chandan in the most recently completed review provided the Department with reasonable grounds to believe or suspect that sales made in the current review were below the COP. *See* Memorandum to Susan Kuhbach, *''Sales Below the Cost of Production for Chandan Steel, Ltd.,''* dated September 6, 2005. On September 20, 2005, in accordance with section 773(b)(2)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated a sales below–cost investigation of Chandan's home market sales. Accordingly, we notified Chandan that it must respond to section D of the Department's antidumping duty questionnaire. *See* Letter from Julie H. Santoboni to Chandan Steel, Ltd., dated September 20, 2005. We did not receive a response to the Department's section D questionnaire from Chandan. For further discussion, see the ''Application of Facts Available'' section, below.

On September 23, 2005, the Department issued a supplemental questionnaire for sections A, B, and C to Chandan. We received a narrative response to the supplemental questionnaire on October 26, 2005. On October 27, 2005, Chandan submitted additional supporting documentation in

[1] On February 28, 2005, the Department declined Shah's request for review because Shah explicitly stated in its request that it did not have any export sales to the United States during the period of review. *See* Letter from the Department to Mr. D.P.S. Bindra (Senior Vice President of Shah Alloys, Ltd.), dated February 28, 2005.

[2] We did not initiate with respect to Viraj because the order for this company was revoked on September 14, 2004. *See* Letter from the Department to counsel to Viraj, ''Extension Requests,'' dated April 19, 2005; *see also Stainless Steel Bar From India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 69 FR 55409 (Sept. 14, 2004); *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

response to the Department's supplemental questionnaire.

On October 18, 2005, the Department found that, because of the complexity of choosing the appropriate date of sale, and the late initiation of a cost investigation, it was not practicable to complete this review within the time period prescribed. Accordingly, we extended the time limit for completing the preliminary results of this review to no later than February 28, 2006, in accordance with section 751(a)(3)(A) of the Act. *See Stainless Steel Bar from India; Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review*, 70 FR 60493 (October 18, 2005).

On November 4, 2005, the Department issued its second supplemental questionnaire, in which we requested Chandan clarify certain information reported in its May 10, 2005, section A response. On November 7, 2005, we sent a third supplemental questionnaire to Chandan requesting Chandan make certain revisions to its submitted U.S. sales listings. We received responses to these supplemental questionnaires on November 10, 2005. On November 14, 2005, the we issued a fourth supplemental questionnaire to Chandan for sections A, B, and C. We did not receive a response to this supplemental questionnaire from Chandan. For further discussion, see the ''Application of Facts Available'' section of this notice, below.

On November 23, 2005, the petitioners submitted comments on Chandan's failure to cooperate fully in the current administrative review. In those comments, the petitioners noted that Chandan: (1) Failed to provide a response to the Department's original section D questionnaire; (2) failed to timely respond to the Department's November 14, 2005, supplemental questionnaire; and (3) failed to substantiate that Chandan's U.S. prices are correct and that they correspond to the sale to the first unaffiliated customer in the United States. Accordingly, the petitioners argued that, due to these deficiencies, the Department should apply total AFA for these preliminary results.

Scope of the Order

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut–to-length flat–rolled products (*i.e.*, cut–to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this proceeding. *See* Memorandum to Barbara E. Tillman, *Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling*, dated May 23, 2005. *See also Notice of Scope Rulings*, 70 FR 55110 (September 20, 2005).

Period of Review

The POR is February 1, 2004, through January 31, 2005.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department may rescind an administrative review in whole or in part, if interested parties that requested a review withdraw their requests within 90 days of the date of publication of notice of initiation of the requested review. As noted above in the ''Background'' section of this notice, Isibars, Mukand and Venus withdrew their requests for an administrative review on April 18, 2005. Because the petitioners did not request an administrative review for any of these companies and the requests to withdraw were made within the time limit specified under section 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to Isibars, Mukand and Venus.

With regard to Facor, pursuant to section 751(a)(2)(A) of the Act, when conducting an administrative review, the Department examines entries of subject merchandise. According to 19 CFR 351.213(d)(3), the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer, if we conclude that, during the POR, there were no entries, exports, or sales of the subject merchandise, as the case may be. The Department has interpreted the statutory and regulatory language as requiring ''that there be entries during the period of review upon which to assess antidumping duties.'' *See Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088, 44089 (August 1, 2005). Moreover, in *Chia Far Industrial Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1344, 1374 (CIT August 2, 2004), the Court affirmed the Department's rescission of a review for lack of entries, stating that ''Commerce correctly decided to rescind Ta Chen's review based on the fact that there were no entries of the merchandise at issue during the POR, regardless of whether there were sales.''

As stated above in the ''Background'' section, in this administrative review, Facor reported no entries of subject merchandise to the U.S. market during the POR, a fact which the Department confirmed by conducting an inquiry with CBP. Even if the Department's practice were to review sales, as opposed to entries, Facor had no sales during the POR. In its questionnaire responses, Facor argued that the Department should use the purchase order date, as opposed to the invoice date, as the U.S. date of sale. However, the Department's rebuttable presumption is to use the invoice date as the date of sale. *See* 19 CFR 351.401(i). Facor failed to provide a compelling reason for the Department to deviate from its standard practice. According to information on the record, Facor issued no sales invoices to the United States during the POR. On November 22, 2005, we published a notice of intent to rescind this administrative review. We invited interested parties to comment. No comments were received. Accordingly, we are preliminarily rescinding the current administrative review with respect to Facor.

Application of Facts Available

Section 776(a)(2) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

As discussed in the ''Background'' section above, on September 20, 2005, the Department requested that Chandan respond to section D of the Department's antidumping duty questionnaire. The original deadline to file a response to section D of the questionnaire was October 12, 2005. During October and November 2005, Chandan requested, and the Department granted, numerous extensions to Chandan for the submission of the section D questionnaire response. Ultimately, Chandan's section D questionnaire response was due on November 14, 2005. However, the Department did not receive a response from Chandan, nor did Chandan request an additional extension. On November 22, 2005, the Department contacted Chandan's legal counsel with respect to Chandan's filing of the section D response. The Department was informed by Chandan's legal counsel that counsel had not received a response from Chandan, nor did counsel know whether Chandan would be filing a response. *See* Memorandum from Mark Todd, Office of Accounting, to the File, dated November 22, 2005. Further, the Department gave Chandan until November 21, 2005, to file a supplemental questionnaire response regarding sales information. However, no response was received. Moreover, Chandan did not ask for an extension of time nor did it indicate that a response would be submitted at a later date.

Despite the Department's attempts to obtain the information, pursuant to section 782(d) of the Act, Chandan failed to respond to certain questionnaires and has refused to participate fully in this administrative review. As such, Chandan has significantly impeded this proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available is appropriate.

Adverse Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005) (''*2003/2004 Final Results*''); *see also Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (''SAA''). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997), and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (''*Nippon*''). We preliminarily find that Chandan did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act. Chandan has participated in prior administrative reviews (*see, e.g., 2003/2004 Final Results; and Stainless Steel Bar from India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 69 FR 55409 (September 14, 2004) (''*2002/2003 Final Results*'')), and, therefore, should know that it is required to respond to the Department's questionnaire, including the section D questionnaire. In not responding to the Department's questionnaires, Chandan has failed to act to the best of its ability in complying with the Department's requests for information in this review. Therefore, an adverse inference is warranted. *See Nippon* 337 F.3d at 1382–83. We note that COP/constructed value (''CV'') data provided by a respondent in the section D questionnaire is vital to our dumping analysis, because: 1) it provides the basis for determining whether comparison market sales can be used to calculate normal value; and 2) in certain instances (*e.g.*, when there are no comparison market sales made at prices above the COP), it is used as the basis of normal value itself. In cases involving a sales–below-cost investigation, as in this case, lack of COP/CV information renders a company's response so incomplete as to be unuseable. *See e.g., Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 43650, 43655 (August 11, 1999); *Certain Cut–to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 82–83 (January 4, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43664 (August 14, 1998); and *Certain Cut–to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*, 62 FR 18396, 18401 (April 15, 1997). Therefore, section 782(e) of the Act does not apply.

Accordingly, we preliminarily find that an adverse inference is warranted in selecting facts otherwise available. Section 776(b) of the Act further provides that the Department may use as AFA, information derived from: 1) The petition; 2) a final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). Additionally, the Department's practice has been to assign the highest margin determined for any party in the less–than-fair–value (''LTFV'') investigation or in any administrative review of a specific order to respondents who have failed to cooperate with the Department. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897, 54898 (September 19, 2005).

In order to ensure that the margin is sufficiently adverse so as to induce Chandan's cooperation, we have preliminarily assigned a rate of 21.02 percent, which was the rate alleged in the petition and assigned in previous segments of this proceeding, and is the highest rate determined for any respondent in any segment of this proceeding. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915, 66921 (December 28, 1994) (''*LTFV Final Determination*''). The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with 776(b) of the Act). Furthermore, this rate was also assigned as AFA to Chandan in the 2002/2003 antidumping duty administrative review because Chandan provided incomplete and largely unresponsive replies to explicit instructions and numerous requests for information made by the Department. *See 2002/2003 Final Results*.

The Department recognizes that in the previous administrative review, Chandan was assigned a different AFA rate, that is, Chandan was assigned the highest calculated rate given to any respondent in any segment of this proceeding (*i.e.*, 19.80 percent). *See 2003/2004 Final Results*. However, after reconsideration of the facts on the record in this proceeding and past Department practice, we find that the appropriate rate to assign Chandan as AFA is the rate of 21.02 percent.

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d) and SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive dumping margins. The only source for dumping margins is administrative determinations. In a previous administrative review in this proceeding, the Department found that the petition rate was reliable. *See Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003) (''*2001/2002 Final Results*'').

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Therefore, we also examined whether any information on the record would discredit the selected rate as reasonable facts available for Chandan. No such information exists. In particular, there is no information that might lead to a conclusion that a different rate would be more appropriate.

Accordingly, we have assigned Chandan, in this administrative review, the rate of 21.02 percent as total AFA. This is consistent with section 776(b) of the Act which states that adverse inferences may include reliance on information derived from the petition. Finally, we note that Chandan was previously assigned this rate for its failure to cooperate. *See 2001/2002 Final Results* and *2002/2003 Final Results*. Furthermore, the Department has corroborated this rate in prior segments of this proceeding. *See 2001/2002 Final Results; see also 2002/2003 Final Results*. Because there are no calculated margins for any other respondents in this administrative review, we believe the 21.02 percent rate continues to have probative value and that there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we find that the 21.02 percent margin is corroborated to the greatest extent practicable in accordance with 776(c) of the Act.

Preliminary Results of the Review

For the firm listed below, we find that the following percentage margin exists for the period February 1, 2004, through January 31, 2005:

Exporter/Manufacturer	Margin
Chandan Steel, Ltd.	21.02

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; and 2) a brief summary of the argument with an electronic version included.

Assessment

Pursuant to section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer or customer of the subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Upon issuance of the final results of this administrative review, if any importer- or customer–specific assessment rates calculated in the final results are above de minimis (*i.e.*, at or above 0.5 percent), *see* 19 CFR 351.106(c), the Department will instruct CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

In accordance with the Department's clarification of its assessment policy (*see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003)), in the event any entries were made during the period of review through intermediaries under the CBP case number for Facor, the Department will instruct CBP to liquidate such

entries at the all–others rate in effect on the date of entry.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of SSB from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis, i.e.*, less than 0.5 percent); 2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; 3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the ''all others'' rate established in the LTFV investigation. *See LTFV Final Determination.*

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–3171 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China

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

SUMMARY: The Department of Commerce (''Department'') received timely requests to conduct an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). The anniversary month of this order is January. In accordance with the Department's regulations, we are initiating this administrative review.

EFFECTIVE DATE: March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0414 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests, in accordance with 19 CFR 351.213(b) (2002), during the anniversary month of January, for an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC covering 137 entities. Subsequently, 30 requesters withdrew their requests for review. The Department is now initiating an administrative review of the order covering the remaining 107 companies.

Initiation of Review

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC. We intend to issue the final results of this review not later than January 31, 2007.

Antidumping Duty Proceeding	Period to be Reviewed
THE PEOPLE'S REPUBLIC OF CHINA:[1].	
Wooden Bedroom Furniture A–570–890	6/24/04 - 12/31/05
• Art Heritage International Ltd., Super Art Furniture Co. Ltd., Artwork Metal & Plastic Co., Ltd., Jibson Industries, Always Loyal International*.	
• Baigou Crafts Factory of Fengkai.	
• Best King International Limited, Best King International Ltd., Bouvrie International Limited.	
• Birchfield Design Group, Inc., Birchfield Design (Asia), Ltd., Dongguan Birchfield Gifts Co., Ltd., Dongguan Longreen Birchfield Arts & Craft Co., Ltd..	
• Chiu's Faithful Furniture (Shenzhen) Company Limited, Faithful International Trading (Hong Kong) Company Limited.	
• Conghua J.L. George Timber & Co..	
• Dalian Guangming Furniture Co., Ltd.*.	
• Dalian Huafeng Furniture Co., Ltd.*.	
• DaLian Pretty Home Furniture Co., Ltd..	
• Dawn Smart Furniture Co., Ltd..	
• Decca Furniture Limited and other affiliates of Decca Holdings Limited.	
• Deqing Ace Furniture & Crafts Limited.	
• Der Cheng Furniture Co., Ltd..	
• Dong Guan Hua Ban Furniture Co., Ltd..	
• Dongguan Cambridge Furniture Co., Ltd., Glory Oceanic Co., Ltd.*.	
• Dongguan Dihao Furniture Co., Ltd..	
• Dongguan Landmark Furniture Products Ltd..	
• Dongguan Lung Dong Furniture Co., Ltd., Dongguan Dong He Furniture Co., Ltd., Engmost Investment Ltd.*.	
• Dongguan Mingsheng Furniture Co., Ltd..	
• Dongguan New Technology Import & Export Co., Ltd..	

Antidumping Duty Proceeding	Period to be Reviewed
• Dongguan Sea Eagle Furniture Co., Ltd., Kalanter (Hong Kong) Furniture Co., Ltd.. • Dongguan Sunpower Enterprise Co., Ltd.. • Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd, Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs *. • Dongguan Yihaiwei Furniture Limited. • Dream Rooms Furniture (Shanghai) Co., Ltd.*. • Ever Spring Furniture Co., Ltd., S.Y.C. Family *. • Fine Furniture (Shanghai) Limited and its affiliates *. • Foshan Guanqiu Furniture Co., Ltd.*. • Fujian Lianfu Forestry Co., Ltd., Fujian Wonder Pacific Inc., Fuzhou Huan Mei Furniture Co., Ltd., Jiangsu Dare Furniture Co. Ltd.*. • Fujian Senda Foreign Trade Co., Ltd.. • Fuzhou Huan Mei Furniture Co., Ltd.. • Gaomi Yatai Wooden Ware Co., Ltd., Team Prospect International Ltd.*. • Guangdong New Four Seas Furniture Manufacturing, Ltd., Four Seas Furniture Manufacturing Ltd.. • Guangzhou Lucky Furniture Co., Ltd.. • Guangzhou Maria Yee Furnishings, Ltd., Pyla HK Ltd., Maria Yee, Inc.. • Hainan Rulai Furniture Co., Ltd.. • Honest Furniture Company Ltd.. • Hong Yu Furniture (Shenzhen). • Huizhou Jadom Furniture Co., Ltd., Jadom Furniture Co., Ltd.. • Hung Fai Wood Products Factory Ltd.. • Hwangho New Century Furniture (Dongguan) Corp. Ltd., Trade Rich Furniture (Dongguan) Corp., Ltd., Hwang Ho International Holdings Limited. • Inni Furniture. • Jiangmen Kinwai Furniture Decoration Co., Ltd., Jiangmen Kinwai International Furniture Co., Ltd.*. • King Kei Trading Co. Ltd. King Kei Furniture Factory, Jiu Ching Trading Co., Ltd.. • King Wood Furniture Co., Ltd.. • Kong Fong Furniture. • Kong Fong Mao Iek Hong. • Kunwa Enterprises Company. • Lacquer Craft Mfg. Co., Ltd., Samson Holding Ltd., Samson International Enterprises, Legacy Classic Furniture, Universal Furniture International Inc.*. • Langfang TianCheng Furniture, Huari Furniture*. • Leefu Wood (Dongguan) Co., Ltd., King Rich International, Ltd.*. • Locke Furniture Factory, Kai Chan Furniture Co. Ltd., Kai Chan (Hong Kong) Enterprise Ltd., Taiwan Kai Chan*. • Maestro Wood Product Factory. • Mandarin Furniture (Shenzhen) Co., Ltd.. • Meikangchi (Nantong) Furniture Company Ltd.. • Million Kind Co., Ltd.. • Million Kind Furniture Co., Ltd. Million Kind Co., Ltd.. • NanTong YangZi Furniture Co., Ltd.. • Nathan International Ltd., Nathan Rattan Factory, Nathan China Group*. • Ngai Kun Trading. • Ningbo Furniture Industries Ltd., Ningbo Fubang Furniture Industries Limited, Techniwood Industries Limited, Techniwood (Macao Commercial Offshore) Limited, Ningbo Techniwood Furniture Industries Limited*. • Placetech Co., Ltd.. • Po Ying Industrial Co.. • Profit Force Limited. • Protrend Metal & Plastics (Shenzhen) Co., Ltd.. • Putian Ou Dian Furniture Co., Ltd.. • Qingdao Beiyuan–Shengli Furniture Co., Ltd., Qingdao Beiyuan Industry Trading Co. Ltd.. • Qingdao Shengchang Wooden Co., Ltd.. • RiZhao SanMu Woodworking Co., Ltd., RiZhao SanMu Woodworking Group*. • Rui Feng Woodwork (Dongguan) Co., Rui Feng Lumber Development (Shenzhen) Co., Ltd.*. • Senyuan Furniture Group. • Shanghai Aosen Furniture Co., Ltd.. • Shenyang Kunyu Wood Industry Co., Ltd.. • Shenzhen Dafuhao Industrial Development Co., Ltd.. • Shenzhen Shen Long Hang Industry Co., Ltd.. • Shenzhen Tiancheng Furniture Co., Ltd., Winbuild Industrial Ltd., Red Apple Furniture Co., Ltd., Red Apple Trading Co., Ltd.. • Sino Concord (Zhangzhou) Furniture Co., Ltd., Sino Concord International Corp.. • Speedy International Ltd.. • Starcorp Furniture (Shanghai) Co., Ltd., Shanghai Starcorp Furniture Co., Ltd., Orin*. • Sunforce Furniture (Hui–Yang) Co., Ltd., SunFung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co. Ltd., Stupendous International Co. Ltd.*. • T.J. Maxx International Co., Ltd.. • Tianjin First Wood Co., Ltd.. • Tianjin Sande Fairwood Furniture Co., Ltd.*. • Time Crown (U.K.) International Ltd., China United International Co.. • Top Art Furniture. • Top Goal Development Co., Top Goal Furniture Co., Ltd. (Shenzhen).	

Antidumping Duty Proceeding	Period to be Reviewed
• Tradewinds Furniture Ltd., Fortune Glory Industrial Ltd. (HK Ltd.) Nanhai Jiantai Woodwork Co., Ltd.*. • Transworld (Zhangzhou) Furniture Co., Ltd.. • Trendex Industries Ltd., Trendex Industries Ltd., (BVI), Dongguan Chunsan Wood Products Co., Ltd., Kunshan Junsen Furniture Co., Ltd.*. • Triple J Enterprises Co.. • Triple J Furniture (Shenzhen) Co., Ltd.. • Wan Bao Cheng Group Hong Kong Co., Ltd.. • Wanhengton Nueevder (Furniture) Manufacture Co., Ltd., Dongguan Wanhengton Industry Co., Ltd.*. • WBE Industries (Hui–Yang) Co., Ltd.. • Winmost Enterprises Limited. • Winny Universal, Ltd.. • Xilinmen Group Co., Ltd.. • Yihua Timber Industries Co., Ltd., New Classic Home Furnishings, Inc.*. • Yixinglong Furniture Co., Ltd.. • Yongxin Industrial (Holdings) Limited. • Zhejiang Niannianhong Industrial Co., Ltd.. • Zhongshan Fine Furniture. • Zhongshan Gainwell Furniture Co., Ltd.. • Zhongshan Golden King Furniture Industrial Co., Ltd., King Group Furniture*. • Zhongshan Winly Furniture Ltd.. • Zhongshan Winny Furniture Ltd.. • Zhongshan Youcheng Wooden Arts & Crafts Co., Ltd.. * These companies received a separate rate in the prior segment (the less–than-fair–value-investigation) of this proceeding..	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of wooden bedroom furniture from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

Sampling

Section 777A(c)(1) of the Tariff Act of 1930, as amended (''the Act''), directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to examine either (1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

Due to the large number of firms requested for an administrative review and the Department's experience regarding the resulting administrative burden to review each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review by sampling. *See* Section 777A(c) of the Act.

Should the Department determine to sample, it will follow the procedures outlined below. The Department will 1) Issue a letter to the interested parties detailing the proposed sampling methodology and the deadline for submitting comments thereon, 2) after analyzing the parties' comments, finalize its sampling methodology, 3) notify the parties and invite them to send a representative to witness the sampling selection, 4) conduct the sampling exercise, 5) notify all interested parties of the selection outcome of the sampling exercise (selected respondents will be issued the full antidumping questionnaire), and 6) record the results in a memo to the file.

Withdrawl of Request for Administrative Review

For this particular administrative review, due to the time constraints imposed by our statutory deadlines, and the need to preserve the statistical validity of the sampling methodology, it is unlikely that the Department will be able to grant any extensions to the 90–day time limit for withdrawals of request for review pursuant to 19 CFR 351.213(d)(1).

Separate Rates

In proceedings involving Non–Market Economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

The Department recently modified the process by which exporters and producers may obtain separate–rate status in NME investigations. *See* Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries, (April 5, 2005), available on the Department's website at http://ia.ita.doc.gov/policy/bull05–1.pdf. The process now requires the submission of a separate–rate status application.

Due to the large number of firms requesting an administrative review in this proceeding, the Department is requiring all firms listed above that wish to qualify for separate–rate status in this administrative review to complete, as

appropriate, either a separate–rate status application or certification, as described below. If the Department determines to select the mandatory respondents through sampling in this administrative review, the Department will require all potential respondents to demonstrate their eligibility for a separate rate. The Department then will make the separate–rate determinations and allow only those respondents with separate–rate status to be included in the sampling pool. For those respondents that are determined later in this segment to have provided inaccurate information regarding their separate–rate status, the Department may apply facts available with an adverse inference.

For this administrative review, in order to demonstrate separate–rate eligibility, the Department requires entities for whom a review was requested that were assigned a separate rate in the previous segment of this proceeding to certify that they continue to meet the criteria for obtaining a separate rate. The certification form will be available on the Department's website at http://ia.ita.doc.gov/ on the date of publication of this **Federal Register**. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Certifications are due to the Department no later than March 30, 2006. The deadline and requirement for submitting a Certification applies equally to NME–owned firms, wholly foreign–owned firms, and foreign sellers who purchase the subject merchandise and export it to the United States.

For entities that have not previously been assigned a separate rate, to demonstrate eligibility for such, the Department requires a separate–rate status application. The separate–rate status application will be available on the Department's website at http://ia.ita.doc.gov/ on the date of publication of this **Federal Register**. In responding to the separate–rate status application, refer to the instructions contained in the application. Separate–rate status applications are due to the Department no later than April 18, 2006. The deadline and requirement for submitting a separate–rate status application applies equally to NME–owned firms, wholly foreign–owned firms, and foreign sellers that purchase the subject merchandise and export it to the United States. Further, if the Department decides to select mandatory respondents by sampling, due to the time constraints imposed by our statutory deadlines and the need to preserve the statistical validity of the sampling methodology, the Department may be unable to grant any extensions for the submission of separate–rate certifications or applications.

Quantity and Value Questionnaire

In advance of issuance of the antidumping questionnaire, we will also be requiring all parties for whom a review is requested to respond to a Quantity and Value (''Q&V'') questionnaire, which will request information on the respective quantity and U.S. dollar sales value of all exports to the United States of wooden bedroom furniture during the period of June 24, 2004, through December 31, 2005. Additionally, in the event sampling is employed, in order to determine a sampling method that is representative of the sales under review, the Department will require that each company complete the economic characteristics section of the Q&V questionnaire. The Q&V questionnaire will be available on the Department's website at http://ia.ita.doc.gov/ on the date of publication of this **Federal Register**. The responses to the Q&V questionnaire are due to the Department no later than April 7, 2006. Due to the time constraints imposed by our statutory and regulatory deadlines, and the need to preserve the statistical validity of the sampling methodology, the Department may not be able to grant any extensions for the submission of the Q&V questionnaire. In responding to the Q&V questionnaire, refer to the instructions contained in the Q&V questionnaire.

Notice

This notice constitutes public notification to all firms requested for review and seeking separate–rate status in this administrative review of the antidumping duty order on wooden bedroom furniture from the PRC that they must submit a separate–rate status application or certification (as appropriate) as described above, and a complete response to the Q&V questionnaire within the time limits established in this notice of initiation of administrative review in order to receive consideration for separate–rate status. In other words, the Department will not give consideration to any separate–rates certification or separate rate–status application made by parties that fail to timely respond to the Q&V questionnaire or fail to timely submit the requisite separate–rate certification or application. All information submitted by respondents in this administrative review is subject to verification. To allow the possibility for sampling and to complete this segment within the statutory time frame, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the separate–rate certification, the separate–rate status application, and the Q&V questionnaire will be available on the Department's website at http://ia.ita.doc.gov/ on the date of publication of this **Federal Register**. However, because this is the first administrative review in which the Department is applying these procedures, the Department will also issue, as a courtesy to the parties, a letter of notification of these requirements to the parties requested for review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at http://ia.ita.doc.gov.

This initiation and notice are in accordance with section 751(a) of the Act (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 28, 2006.

Wendy J. Frankel,

Director, AD/CVD Operations, Office 8, for Import Administration.

[FR Doc. E6–3172 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–580–837)

Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain cut–to-length carbon–quality steel plate (CLT plate) from the Republic of Korea (Korea) for the period January 1, 2004, through December 31, 2004, the period of review (POR). For information on the net subsidy rate for the reviewed company, see the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. *See* the ''Public Comment'' section of this notice.

EFFECTIVE DATE: March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Eric B. Greynolds, AD/

CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1767 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, the Department published in the **Federal Register** the CVD order on CTL plate from Korea. *See Notice of Amended Final Determination: Certain Cut–to-Length Carbon–Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut–to-Length Carbon–Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*CTL Plate Order*). On February 1, 2005, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 5136 (February 1, 2005). On February 28, 2005, we received a timely request for review from Dongkuk Steel Mill Co., Ltd. (DSM), a Korean producer and exporter of subject merchandise. On March 23, 2005, the Department initiated an administrative review of the CVD order on CTL plate from Korea, covering January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

On May 16, 2005, the Department issued a questionnaire to the Government of Korea (GOK) and DSM. We received questionnaire responses from DSM and the GOK on July 15, 2005. On September 27, 2005, we issued supplemental questionnaires to the GOK and DSM; the responses were received on October 11, 2005, from the DSM and on October 17, 2005, from the GOK. On February 22, 2006, we issued a second supplemental to DSM and received a response on February 24, 2006.

On October 13, 2005, the Department published in the **Federal Register** an extension of the deadline for the preliminary results. *See Notice of Extension of Time Limits for Preliminary Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from Korea*, 70 FR 59722 (October 13, 2005).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The only company subject to this review is DSM. This review covers 19 programs.

Scope of Order

The products covered by the CVD order are certain hot–rolled carbon–quality steel: (1) universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut–to-length (not in coils) and without patterns in relief), of iron or non–alloy-quality steel; and (2) flat–rolled products, hot–rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut–to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non–rectangular cross-section where such non–rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')--for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non–metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non–metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion–resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to the order is currently classifiable under the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

SUBSIDIES VALUATION INFORMATION

A. Allocation Period

In *CTL Plate Investigation*, the Department determined that the Average Useful Life (AUL) listed in the IRS table reasonably reflects the AUL of renewable physical assets for the firm or industry under investigation. *See Final Affirmative Countervailing Duty Determination: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 64 FR 73176, 73177 (December 29, 1999) (*CTL Plate Investigation*). No interested parties have claimed that the AUL of 15 years is unreasonable. Therefore, in accordance with 19 CFR 351.524(d)(2), we continue to allocate DSM's non–recurring subsidies over 15 years.

B. Benchmarks for Loans and Discount Rate

Benchmark for Long–Term Loans issued through 2004

During the POR, DSM had both won- and foreign currency denominated long–term loans outstanding which they

received from government–owned banks, and Korean commercial banks. Based on our findings on this issue in prior investigations, we are using the following benchmarks to calculate the subsidies attributable to respondent's long–term loans obtained in the years 1992 through 2004:

(1) For foreign–currency denominated loans, pursuant to 19 CFR 351.505(a)(2)(i), our preference is to use the company–specific weighted–average foreign currency–denominated interest rates on the company's loans from foreign bank branches in Korea, foreign securities, and direct foreign loans received after April 1999. We note that these benchmarks are consistent with the decisions in *Plate in Coils* and *Stainless Steel Sheet and Strip*, in which the Department determined that the GOK did not control access to foreign currency loans from Korean branches of foreign banks. *See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15533 (March 31, 1999) (*Plate in Coils*) and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30642 (June 8, 1999) (*Stainless Steel Sheet and Strip*). For variable–rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(2)(i), our preference is to use, as the benchmark, an interest rate of a lending instrument issued during the POR; and for fixed–rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), our preference is to use a benchmark rate issued in the same year that the loan was issued. However, no such benchmark instruments were available, and consistent with our methodology in *2001 Sheet and Strip* we relied on the lending rates as reported by the IMF's *International Financial Statistics Yearbook*. *See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*2001 Sheet and Strip*), and the ''Subsidies Valuation Information'' section of the accompanying Issues and Decision Memorandum (2001 Sheet and Strip Decision Memorandum).

(2) For won–denominated long–term loans, we used the company–specific corporate bond rate on the company's public and private bonds. We note that this benchmark is consistent with our decision in *Plate in Coils*, 64 FR at 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that the interest rate on domestic bonds may serve as an appropriate benchmark interest rate.

Programs Preliminarily Determined To Be Countervailable

1. The GOK's Direction of Credit

The Department determined in *H–Beams* that the Korean steel industry received a disproportionate amount of long–term financing as a result of the GOK's effective control and direction of government loans, government–directed long–term commercial loans, and government–directed foreign loans. *See Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*H–Beams*) and the ''The GOK's Direction of Credit Policies'' section of the accompanying Issues and Decision Memorandum (H–Beams Decision Memorandum). Thus, the Department determined that the GOK's direction of credit policies were specific to the Korean steel industry through 1991 pursuant to section 771(5A)(D)(iii) of the Tariff Act of 1930, as amended (the Act). The Department further determined that the provision of long–term loans provided a financial contribution and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E)(ii) of the Act, respectively. *Id.*

In other Korean CVD proceedings, the Department determined that the GOK controlled and directed lending through year 2001[1]. DSM had outstanding loans that were received prior to the 2001 period. DSM did not provide any new information that would warrant a change in our methodology, therefore we continue to find that this program provides a countervailable subsidy for loans from government–owned or controlled banks through 2001.

DSM had outstanding loans during the POR that it received from government–owned or controlled lending institutions between 2002 and 2004. We asked the GOK for information pertaining to the GOK's direction of credit policies for the period between 2002 and 2004. The GOK did not provide any additional information, stating instead that,

> ''the Government of Korea continues to believe that the evidence demonstrates that there has been no direction of credit to the Korean steel industry. Nevertheless, the Department has consistently found that long–term loans received by Korean steel producers were the result of the Korean Government's direction, despite the Government's repeated submission of evidence to the contrary. . . Consequently, in this review, the Government will not contest the Department's findings on direction of long–term loans.''

See July 15, 2005 GOK submission at page 11. Because the GOK withheld the requested information on its lending policies, the Department does not have the necessary information on the record to determine whether the GOK has continued its direction of credit policies from 2002 through 2004; therefore, the Department must base its determination on facts otherwise available. *See* section 776(a)(2)(A) of the Act. In making determinations based on facts available, the Department may resort to adverse inferences if it finds that a respondent has failed to cooperate to the best of its ability in complying with the Department's requests for information. *See* section 776(b) of the Act. In this case, the GOK refused to supply requested information which was in its possession and which it had provided in the past. *See Plate in Coils* and *CTL Plate Investigation*. Therefore, the Department finds that the GOK did not act to the best of its ability and is employing an adverse inference in selecting from among the facts otherwise available. *See also*, ''The GOK's Direction of Credit'' section in the 2001 Sheet and Strip Decision Memorandum. As adverse facts available, we therefore, find that the GOK's direction of credit policies continued from 2002 through 2004. As noted above, the GOK's direction of credit policies provide a financial contribution and a benefit, and are specific pursuant to sections 771(5)(D)(i), 771(5)(E)(ii), and 771(5A)(D)(iii) of the Act, respectively. Therefore, we preliminarily find that lending from domestic banks and from government–owned banks during the 2002 and 2004 period are countervailable. Therefore, any of DSM's loans received during 2002 and 2004 from domestic banks and

[1] The Department determined in the following cases that the GOK controlled or directed credit to the steel industry: (1992 through 1997) *Plate in Coils*, 64 FR at 15332 and *Stainless Steel Sheet and Strip*, 64 FR at 30641, (1998) H-Beams Decision Memorandum at ''The GOK's Direction of Credit'' section, (1999) *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 67 FR 1964 (January 15, 2002) (*1999 Sheet and Strip*) and ''The GOK's Direction of Credit'' section of the accompanying Issues and Decision Memorandum (1999 Sheet and Strip Decision Memorandum), (2000) *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62101 (October 3, 2002) (*Cold-Rolled from Korea*) and ''The GOK's Direction of Credit'' section of the accompanying Issues and Decision Memorandum, (Cold-Rolled Decision Memorandum), and (2001) 2001 Sheet and Strip Decision Memorandum at ''The GOK's Direction of Credit'' section.

government–owned banks that were outstanding during the POR are countervailable.

DSM received long–term fixed and variable rate loans from GOK–owned or controlled institutions that were outstanding during the POR. DSM had both won- and foreign currency denominated loans outstanding during the POR. We calculated the benefit for each as follows:

Won–Denominated Loans:

There is no information on the record of this review that indicates that DSM received a benefit from any special repayment terms (*i.e.*, abnormally long grace periods or maturities, etc.) on their long–term, fixed–rate loans. Therefore, in accordance with 19 CFR 351.505(c)(2), to calculate the benefit for both fixed- and variable–rate loans received from GOK–owned or controlled banks, we used the difference between the interest payments on the directed loans and the benchmark interest payments. For benchmark information see ''Subsidies Valuation Information'' section of this notice. We then summed the benefits from DSM's long–term fixed- and variable–rate won–denominated loans.

Foreign Currency Denominated Loans:

DSM did not have foreign currency denominated loans outstanding during the POR which could be used for benchmark purposes. For the foreign currency denominated loans we used the lending rates as reported by the IMF's *Financial Statistics Yearbook*. *See* ''Subsidies Valuation Information'' section above.

To calculate the benefit, we used the difference between the interest payments that DSM made and the benchmark interest payments. As the interest payments were in foreign currencies, we multiplied the benefit amount by the exchange rate to establish a Korean won benefit.

To calculate the total benefit for all directed credit, we added the benefit received from foreign currency loans in Korean won to the benefit received from won–denominated loans. Because this program is not tied to exports, we used total sales as the denominator. We then divided the total benefit by DSM's total f.o.b. sales value during the POR. On this basis, we determine the countervailable subsidy to be 0.04 percent *ad valorem* for DSM.

2. Asset Revaluation under Tax Programs under the Tax Reduction and Exemption Control Act (TERCL) Article 56(2)

During the investigation, the Department determined that DSM benefitted from the revaluation of its assets pursuant to TERCL Article 56(2). *See CTL Plate Investigation*, 65 FR at 73182–73183. The Department determined that this program was specific under section 771(5A)(D)(iii) of the Act, and that a financial contribution was provided in the form of tax revenue foregone pursuant to 771(5)(D)(ii) of the Act. *Id.* Moreover, the Department determined that a benefit was conferred on those companies that were able to revalue their assets under TERCL Article 56(2) because the revaluation resulted in participants paying fewer taxes than they would otherwise pay absent the program. *Id. See also* 771(5)(E) of the Act.

In 1998 DSM revalued its assets. This revaluation was not pursuant to TERCL Article 56(2) and, according to the GOK, was consistent with Korean Generally Accepted Accounting Principles (GAAP). DSM claims that the asset revaluations that were adopted in 1988 under Article 56(2) of TERCL were superseded when it revalued its assets in 1998. Hence, the 1988 asset revaluation would only affect the calculation of depreciation costs for tax years prior to 1998. However, there were certain assets that were not revalued in 1998. For those assets which were not revalued in 1998, we identified the total amount of the change in depreciation expense attributable to the 1988 asset revaluation for 2003, (the tax return submitted during the POR). We then multiplied this amount by the tax rate for 2003 to determine the benefit under this program. As this program is not tied to exports we used the benefit amount as the numerator and DSM's total sales as the denominator. Using this methodology, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*, which, according to the Department's practice, is considered not measurable and is not included in the calculation of the countervailing duty rate. *See*, *e.g.*, *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088, 33091 (June 7, 2005).

3. Research and Development under Korea Research Association of New Iron and Steelmaking Technology (KANIST) (formerly KNISTRA)

During the *CTL Plate Investigation*, the Department determined that the GOK, through the Ministry of Commerce, Industry and Energy (MOCIE) provided R&D grants to support numerous projects designed to foster the development of efficient technology for industrial development. *See CTL Plate Investigation*, 64 FR at 73185. We found this program to be specific as the grants were provided directly to respondents and their affiliates that are steel–related, and that the grants provided a financial contribution. *Id. see also* sections 771(5A)(D)(ii) and 771(5)(D)(i) of the Act. Moreover, pursuant to section 771(5)(E) of the Act, the Department determined that the benefit was the amount of the GOK's contribution allocated to the percentage of the company's contribution and was conferred at the time of receipt. Pursuant to 19 CFR 351.524(b)(2), the Department allocates non–recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less that 0.5 percent of the relevant sales of the firm in question, during the year in which the subsidy was approved. However, neither the GOK nor DSM provided the total approved amount nor the date of approval. Therefore, for the preliminary results, the Department performed the 0.5 percent test by dividing DSM's portion of the GOK contribution at the time of receipt by DSM's total sales at the time of receipt. Using this approach, the calculated percentages were less than 0.5 percent. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed all of the GOK grants provided under the program to the respective years or receipt. Based on this methodology, we preliminarily determined that for the GOK's contributions made in 2002 and 2003, the benefits were expensed during the years of receipt and, therefore, are not subject to this review. For those grants that were received during the 2004 POR, we preliminarily determine that they were fully expensed in the year of receipt. We, therefore, preliminarily calculate a rate of 0.01 percent *ad valorem*.

Programs Preliminarily Determined Not To Be Used

1. Special Cases of Tax for Balanced Development Among Areas (TERCL Articles 41, 42, 43, 44, and 45

In past Korean cases, the Department determined that Korean manufacturing companies using facilities outside the Seoul metropolitan area benefit from programs falling under the category of special cases of tax for balanced development among areas and includes TERCL Articles 41, 42, 43, 44, and 45. DSM stated that it did not claim any tax reductions or exemptions under these articles during the POR. Therefore, we preliminarily determine that DSM did not use this program during the POR.

2. Price Discount for DSM Land Purchase at Asan Bay

In the *CTL Plate Investigation* the Department determined that the GOK forewent revenue that it normally would have collected on land sold to DSM. *See CTL Plate Investigation*, 64 FR at 73184. The Department determined that the reduced fees and waived management fees constituted a countervailable subsidy. The Department determined that this program was specific under section 771(5A)(D)(iii)(I) of the Act, as it was specific to DSM. *Id*. Moreover, the Department determined that the GOK provided a financial contribution pursuant to section 771(5)(D)(ii) of the Act, because it forewent revenue. *Id*. Pursuant to section 771(5)(E) of the Act, the benefit was equal to the amount of fees that DSM did not pay to the GOK. While this is a non–recurring benefit, the amount of the benefit was less than 0.5 percent of DSM's total sales and was, therefore, expensed during the year of receipt which was prior to the POR of this administrative review. *Id*.

DSM was also initially exempted from the acquisition tax and registration tax on its purchase of land at Asan Bay. In addition, DSM was initially exempted from payment of the education tax and special tax for rural development. These exemptions were conditioned on DSM's constructing facilities within three years of purchase. DSM claims that as it did not construct any facilities at Asan Bay within the required three years of its land purchase, and, thus, it was required in 2002 to pay the acquisition and registration taxes from which it had previously been exempted. *See* DSM's July 15, 2005, submission page 32. Based on this information, we preliminarily find that DSM did not use this program during the POR.

In addition to the above programs, the next twelve programs were also not used.

3. *Requested Load Adjustment (RLA)*
4. *Local Tax Exemption on Land Outside of Metropolitan Area*
5. *Exemption of VAT on Anthracite Coal*
6. *Emergency Load Reduction Program (ELR)*
7. *Private Capital Inducement Act (PCIA)*
8. *Social Indirect Capital Investment Reserve Funds (TERCL Article 28)*
9 *Energy–Savings Facilities Investment Reserve Funds (TERCL Article 29)*
10. *Industry Promotion and Research and Development Subsidies*
   a. *Highly Advanced National Project Fund*
   b. *Steel Campaign for the 21st Century*
11. *Export Insurance Rates Provided by the Korean Export Insurance Corporation*
12. *Export Industry Facility Loans (EIFL) and Speciality Facility Loans*
13. *Scrap Reserve Fund*
14. *Excessive Duty Drawback*

Program Previously Found Not To Be Countervailable

1. TERCL and the Restriction of Special Taxation Act (RSTA)

In *Cold–Rolled from Korea*, the Department found that tax credits under RSTA Articles 24 and 25 (TERCL Articles 25 and 26) are not countervailable for investments made after April 10, 1998. *Id*. The tax credits DSM claimed under RSTA Articles 24 and 25 were related to investments made after April 10, 1998; therefore, we preliminarily find that the tax credits claimed under RSTA Articles 24 and 25 are not countervailable.

Program Preliminarily Found to be not Countervailable

1. Electricity Discounts under Direct Load Interruption (DLI)

During the POR, both Korea Electric Power Corporation (KEPCO) and Korea Energy Management Corporation (KEMCO) administered the DLI program. The DLI program was established in 2001 and governed by the Regulation of Electricity Supply Options. The GOK describes the program as a long–term demand side management strategy for curtaining electricity during peak demand periods. The DLI program is designated for general, industrial and educational customers who agree to allow the supply of at least 300 kilowatts of electricity to their plants to be interrupted during peak demand periods. By agreeing to allow the possible interruption of service to occur during July and August, a company receives a rebate from either KEPCO or KEMCO. If a company applies for and participates in the DLI program, KEPCO/KEMCO installs equipment to control the usage of electricity during the designated periods, at KEPCO/KEMCO's discretion. The company is compensated for giving up an assured electricity supply by a flat fee that is paid in July and August regardless of whether the supply is interrupted. Moreover, the participating company receives an additional fee based on the actual interruptions in the electricity supplied to it, if any. The additional fees depend on the amount of advance warning to the customer and the extent of the interruption of electricity supply.

During the POR, DSM's Inchon plant used this program in conjunction with KEPCO and DSM's Pohang plant had an agreement under the program with KEMCO. DSM's Pusan plant did not use this program during the POR.

KEPCO installed equipment at DSM's Inchon plant, allowing it to control the usage of electricity at KEPCO's discretion; and KEMCO installed equipment in DSM's Pohang plant, allowing KEMPCO to control the usage at the Pohang plant. During the POR, DSM received compensation from KEPCO and KEMCO in exchange for foregoing an assured electricity supply during July and August.

KEPCO bases the standard electricity rates it charges DSM on a published tariff schedule. The electricity rates for the Pohang (Plate Mill and Section Mill) and Inchon plants were based on the ''Industrial Service–C/High Voltage Power–B/Option III'' tariff schedule. The electricity rates applicable to DSM's Pohang (Steel Center) were based on the ''Industrial Service–B/High Voltage Power–A/Option II'' tariff schedule.

In conducting the Department's investigation of the DLI electricity program, the Department must determine whether the program is specific within the meaning of section 771(5A) of the Act. We preliminarily determine that the DLI program is not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act, because (1) it is not based on exportation (2) it is not contingent on the use of domestic goods over imported goods, and (3) the legislation and/or regulations do not expressly limit the access to the subsidy to an enterprise or industry, as a matter of law.

As the Department is preliminarily determining that the DLI program is not *de jure* specific, it must then examine the program under section 771(5A)(D)(iii) of the Act. If the Department finds that one of the following factors exist, then the program is *de facto* specific.

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

Pursuant to section 771(5A)(D)(iii)(I) of the Act, the Department preliminarily finds that under DLI program, the actual recipients of the subsidy are not limited in number, as there are many users of the program that fall into 31 industries. *See* GOK's July 15, 2005, submission at Exhibit G–4–M.

Sections 771(5A)(D)(iii)(II) and (III) of the Act direct the Department to examine whether an enterprise or an industry is a predominant user of the subsidy or receives a disproportionately large amount of the subsidy. Although the steel industry received a greater monetary benefit from the program than did other participants, that is not determinative of whether the steel industry was a dominant user or received disproportionate benefits. For example, in *CTL Plate Investigation*, the Department found that respondent steel companies were not dominant or disproportionate users of a similar electricity program. *See CTL Plate Investigation*, 64 FR at 73186. The Department also stated that ''the fact that certain companies are necessarily large consumers of electricity does not make an electricity program providing tariff reductions to those companies countervailable.'' *Id*. Furthermore, the U.S. Court of International Trade (CIT) upheld the Department's decision in *Bethlehem Steel Corp. v. United States*, 140 F.Supp 2d 1354 (CIT 2001). The CIT found that the Department's methodology was reasonable and reflected the commercial realities of the industry in question. *Id*, at 1369.

Consistent with our finding in *CTL Plate Investigation*, we preliminarily determine that although the steel industry is a large consumer of electricity and, therefore, a large recipient of the tariff reduction, this does not support a conclusion that the percentage of the benefits DSM or the steel industry received were disproportionately high or that the company or the industry was a dominant user. Accordingly, we preliminarily find that the DLI program is not *de facto* specific and is, therefore, not countervailable.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for DSM for 2004. We preliminarily determine the total estimated net countervailable subsidy rate for DSM is 0.05 percent *ad valorem* for 2004, which is *de minimis*. *See* 19 CFR 351.106(c)(1).

If the final results of this review remain the same as these preliminary results, the Department intends to instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results, to liquidate shipments of certain cut–to-length carbon–quality steel from DSM, entered, or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004, at 0.00 percent. Also, the Department intends to instruct CBP to require a new cash deposit rate for estimated countervailing duties of 0.00 percent for all shipments of certain cut–to-length carbon–quality steel plate from DSM, entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review. The Department will issue appropriate instructions directly to CBP within 15 days of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order are those established in the most recently completed administrative proceeding. *See CTL Plate Order*, 65 FR 6589. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309(b)(1), interested parties may submit written arguments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii). Parties who submit written arguments in this proceeding are requested to submit with the written argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–3174 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 05–00002.

SUMMARY: On February 21, 2006, The U.S. Department of Commerce issued an Export Trade Certificate of Review to California Tomato Export Group (''CTEG''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at

(202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2005).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Processed tomato products: Processed tomato products limited to tomato paste, diced tomatoes, canned food service tomatoes, canned retail tomatoes and formulated glass retail tomato products.

2. Export Trade Facilitation Services (As They Relate to the Export of Products)

All export-related services, including, but not limited to, international market research, marketing, advertising, sales promotion, brokering, handling, transportation, common marking and identification, communication and processing of foreign orders to and for Members, financing, export licensing and other trade documentation, warehousing, shipping, legal assistance, foreign exchange and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to Export Trade Activities, CTEG and/or one or more of its Members may on behalf of and with the advice and assistance of its Members:

a. Engage in export promotion of Products through:

i. Researching, developing and conducting promotion and public relations activities to develop demand for the exported Products of the Members;

ii. Seeking export promotional funds to jointly promote the Members' exports of Products in existing and new markets;

iii. Developing and disseminating industry news reports (based only on publicly available information) to foreign buyers and providing publicly available information collectively to prospective export buyers regarding items such as crop inventory and structure of the U.S. processed tomato industry; and

iv. Organizing and conducting joint representation to buyers for export sales at tomato industry conferences;

b. Invest jointly in export infrastructure, activities, and operations, such as:

i. Bill and collect from foreign buyers and provide collective accounting, tax, legal and consulting assistance and services;

ii. Write contracts for export payments;

iii. Develop and maintain a Web site/newsletter and marketing brochures with publicly available product and crop information for the benefit of foreign customers;

iv. Purchase/rent warehouse facilities to conduct export operations;

v. Engage in minor product or packaging modification activities necessary to insure compatibility of Products with the requirements of foreign markets and/or design, develop, and market generic corporate labels and packaging materials for export Products;

vi. Negotiate and enter into agreements with providers of transportation services for the export of Products;

vii. Consolidate CTEG shipments to Export Markets; and

viii. Administer phytosanitary protocols to qualify the Products for Export Markets;

c. Apply for and utilize export assistance and incentive programs, as well as arrange export financing through bank holding companies, governmental programs, and other arrangements;

d. Design and develop foreign marketing strategies for CTEG's Export Markets and design, develop and market generic corporate and/or CTEG labels for export;

e. Establish export sales prices, minimum export sales prices, target export sales prices and/or minimum target export sales prices, and other terms of export sale in connection with actual or potential bona fide export opportunities;

f. Engage in joint bidding or other joint selling arrangements for exported Products and allocate export sales resulting from such arrangements;

g. Participate in negotiations and enter into agreements with foreign buyers (including governments and private persons) regarding:

i. The quantities, time periods, prices and terms and conditions in connection with actual or potential bona fide export opportunities; and

ii. Non-tariff trade barriers in the Export Markets;

h. Refuse to quote prices for export Products, or to market or sell export Products, to or for any customer in the export Product market, or any countries or geographical areas in the Export Markets;

i. Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets among Members of the CTEG;

j. Enter into exclusive and nonexclusive agreements appointing one or more export intermediaries for the sale of export Products with price, quantity, territorial and/or customer restrictions;

k. Conduct meetings with Members of the Certificate and/or CTEG's manager and/or consultant present to engage in export trade activities and/or methods of operation herein described in paragraph 1, or exchange information described in paragraph 2 below;

l. Enter into agreements with non-members, whether or not exclusive, to provide Export Trade Facilitation Services. Purchase Products from non-members to fulfill specific export sales obligations, provided that CTEG and/or its Members shall make such purchases only on a transaction-by-transaction basis and when the Members are unable to supply, in a timely manner, the requisite products at a price competitive under the circumstances. In no event shall a non-member be included in any deliberations concerning any export activities and operations; and

m. Advise and cooperate with the United States and foreign governments in:

i. Establishing procedures regulating the export of Products, and

ii. Fulfilling the phytosanitary and/or funding requirements imposed by foreign governments for export of Products.

2. CTEG may exchange the following information with and among its Members:

a. Information about export sales and marketing efforts, selling strategies, and

contract and spot pricing in the Export Markets;

b. Information regarding Product demand in the Export Markets;

c. Information about the customary terms of sales in Export Markets;

d. Information about export prices and availability of competitor's Products for sale in the Export Markets;

e. Specifications for Products by customers in the Export Markets;

f. Information about terms, conditions, and specifications of contracts relating to actual or potential bona fide export opportunities in the Export Markets to be considered and/or bid on by CTEG and its Members;

g. Information about the price, quality, source, and delivery dates of Products available for export by CTEG Members;

h. Information about joint bidding and/or selling arrangements for Export Markets;

i. Information about expenses specific to exporting to and within the Export Markets, sales, and distribution networks established by CTEG and/or its Members in the Export Markets;

j. Information about export customer credit terms and credit history;

k. Information about United States and foreign legislation and regulations, including federal marketing order programs, affecting sales to the Export Markets;

l. Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among the Members;

m. Information about the expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs duties and taxes;

n. Information about CTEG's and/or its Members' export operations, including without limitation, sales and distribution networks established by CTEG and/or its Members in the Export Markets, and prior export sales by Members (including export price information);

o. Publicly available information regarding the industry-wide forecasted quantity of Products secured through contracts for upcoming seasons; and

p. Relevant information about non-domestic tomato crop supply, including planting intentions, growing conditions, weather, disease, transportation, consumer trends, health news, regulatory impacts and information that impacts on the availability, conditions and costs to foreign buyers.

Definition

''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

The Members are Ingomar Packing Company, Los Banos, California; Los Gatos Tomato Products, Huron, California; and SK Foods, Lemoore, California.

Protection Provided by Certificate

This Certificate protects CTEG, its Members, and directors, officers, and employees acting on behalf of CTEG and its Members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits CTEG and Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of U.S. antitrust laws.

Disclaimer

The issuance of this Certificate of Review to CTEG by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of CTEG or Members or (b) the legality of such business plans of CTEG or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 1, 2006.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E6–3147 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China; Initiation of New Shipper Reviews

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

EFFECTIVE DATE: March 7, 2006.

SUMMARY: The Department of Commerce (the ''Department'') has determined that three requests for a new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''), received by January 31, 2006, meet the statutory and regulatory requirements for initiation. The period of review (''POR'') of these new shipper reviews is June 24, 2004, through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling at (202) 482–0414 or (202) 482–3434, respectively, 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

The notice announcing the antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005 (70 FR 329). On January 31, 2006, we received new shipper review requests from Dongguan Huanghouse Furniture Co., Ltd. (''Huanghouse''), Senyuan Furniture Group (''Senyuan''), and Tianjin First Wood Co., Ltd. (''First Wood''). All of these companies certified that they are both the producers and exporters of the subject merchandise upon which the respective requests for a new shipper review are based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(b)(2)(i), Huanghouse, Senyuan, and First Wood certified that they did not export wooden bedroom furniture to the

United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Huanghouse, Senyuan, and First Wood certified that, since the initiation of the investigation, they have never been affiliated with any exporter or producer who exported wooden bedroom furniture to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), each of the above-mentioned companies also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, the companies submitted documentation establishing the following: (1) The date on which they first shipped wooden bedroom furniture for export to the United States; (2) the volume of their first shipment and the volume of subsequent shipments (if applicable); and (3) the date of their first sale to an unaffiliated customer in the United States.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that the requests submitted by Huanghouse, Senyuan, and First Wood meet the threshold requirements for initiation of a new shipper review for shipments of wooden bedroom furniture from the PRC produced and exported by these companies.

The POR is June 24, 2004, through December 31, 2005. See 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

Because Huanghouse, Senyuan, and First Wood have certified that they produced and exported the wooden bedroom furniture on which they based their respective requests for a new shipper review, we will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of wooden bedroom furniture that was both produced and exported by each company until the completion of the new shipper reviews, pursuant to section 751(a)(2)(B)(iii) of the Act.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: February 28, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–2138 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030106D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meetings of its Scallop Advisory Panel and General Category Scallop Advisory Panels in March, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These meetings will be held on Tuesday, March 21, 2006, at 9:30 a.m. and Wednesday, March 22, 2006, at 9:30 a.m.

ADDRESSES: These meetings will be held at the Holiday Inn, 225 McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250; fax: (617) 561–0971.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The panel's schedule and agenda for the meetings are as follows:

1. Tuesday, March 21, 2006; Scallop Advisory Panel meeting.

2. Wednesday, March 22, 2006; General Category Scallop Advisory Panel meeting.

The advisory panels will review public comments received during scoping for Amendment 11 to the Sea Scallop Fishery Management Plan (FMP). The advisors will also review the scoping document for Amendment 11 and make recommendations to the Scallop Oversight Committee related to the scope of the action. The advisors will discuss potential alternatives for consideration in Amendment 11 including, but not limited to, identifying an appropriate range of resource allocation options involving the limited access and general category scallop fisheries and potential qualification criteria for a limited entry program for the general category fishery. The advisors may also consider other topics as directed by the Scallop Oversight Committee.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 2, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3154 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030106E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is

scheduling a public meetings of its Monkfish Advisory Panel and Monkfish Oversight Committee in March, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These meetings will be held on Thursday, March 23, 2006, at 9:30 a.m. and Friday, March 24, 2006, at 9:30 a.m.

ADDRESSES: These meetings will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600; fax: (978) 535–8238.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The schedules and agendas for the meetings are as follows:

1. Thursday, March 23, 2006; Monkfish Advisory Panel meeting.

The advisory panel will review the monkfish stock status and rebuilding program, as well as other information and recommendations developed by the Monkfish Plan Development Team. In addition to developing recommendations to the Monkfish Committee on approaches to meet the stock rebuilding goals by 2009, the advisors will identify and discuss other issues for consideration in Framework 4 and, to the extent possible at this time, outline management approaches to address those concerns. The Panel's recommendations will be forwarded to the Monkfish Committee and the Council at their respective upcoming meetings.

2. Friday, March 24, 2006; Monkfish Oversight Committee meeting.

The committee will review the monkfish stock status and rebuilding program, as well as other information and recommendations developed by the Monkfish Plan Development Team. The Committee will also review and discuss the recommendations and proposals developed by the Monkfish Advisory Panel. In addition to outlining management approaches to meet the stock rebuilding goals by 2009 for consideration by the Council, the Committee will identify and discuss other issues for consideration in Framework 4 and, to the extent possible at this time, outline management approaches to address those concerns. The Committee's recommendations will be reported to the Council at its April 4–5 meeting.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 2, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3155 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030206A]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee in March, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Friday, March 31, 2006, at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, One Thuber Street, Warwick, RI 02886; telephone: (401) 734–9600; fax: (401) 734–9700.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review public comments received during scoping for Scallop Amendment 11. The Committee will also review input from both the Scallop and General Category Scallop Advisory Panels about the scope of Amendment 11. The committee will review and recommend for Council consideration goals and objectives for Amendment 11. The committee will begin development alternatives for consideration in the Amendment 11 Draft Supplemental Environmental Impact Statement (DSEIS), including, but not limited to, identifying an appropriate range of resource allocation between the limited access and general category scallop fisheries and potential qualification criteria for a limited entry program for the general category fishery and will identify research priorities for the research set-aside program for fishing year 2007. The committee may consider other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: March 2, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3156 Filed 3–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128J]

Recreational Programs

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of intent to fund down the grant slate for the Recreational Programs.

SUMMARY: The Secretary intends to use the grant slate developed for the Recreational Programs in Fiscal Year (FY) 2005 to make new grant awards in FY 2006. The Secretary takes this action because a significant number of high-quality applications remain on the last year's grant slate and limited funding is available for new grant awards in FY 2006.

FOR FURTHER INFORMATION CONTACT: Ed Hofler, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7377.

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

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

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2005, we published a notice in the **Federal Register** (70 FR 6428) inviting applications for new awards under Recreational Programs. This notice indicated that the selection criteria, absolute priority, and application requirements contained in the notice would apply to the FY 2005 grant competition only.

We received a significant number of applications for grants under Recreational Programs in FY 2005 and made nine new grant awards. Because such a large number of high-quality applications were received, many applications that were awarded high scores by peer reviewers did not receive funding last year.

Limited funding is available for new awards under this program in FY 2006. In order to conserve funding that would have been required for a peer review of new applications submitted under the program, we intend to select grantees in FY 2006 from the existing slate of applicants. This slate was developed during the FY 2005 competition using the selection criteria, absolute priority, and application requirements included in the February 7, 2005, notice. No changes to the selection criteria, absolute priority, or application requirements will be required by this action.

Program Authority: 29 U.S.C. 775.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

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

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

Dated: March 2, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–3175 Filed 3–6–06; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0138, 0136 and 0139; EPA–HQ–OW–2002–0053 and 0064; and EPA–HQ–OW–2003–0011; FRL–8041–4]

Agency Information Collection Activities; Proposed Collection; Comment Request on Six Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew existing approved Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before May 8, 2006.

ADDRESSES: Submit your comments, identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.
- *E-mail: ow-docket@epa.gov* (Identify Docket ID No. in the subject line)
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three copies.
- *Hand Delivery:* EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments identified by the Docket ID numbers provided for each item in the text. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Lynn Stabenfeldt, Office of Wastewater Management, 4201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202.564.0602; fax number: 202.501.2399; e-mail address: *stabenfeldt.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for each of the ICRs identified in this document (see the Docket ID. Numbers for each ICR that are provided in the text), which is available for online viewing at *www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of technical information/data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activities or ICRs Does This Apply to?

Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.18, OMB Control No. 2040–0086; Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit, EPA ICR No. 1842.05, OMB Control No. 2040–0188; NPDES Storm Water Program Phase II, EPA ICR No. 1820.04, OMB Control No. 2040–0211; NPDES and ELG Regulatory Revision for Concentrated Animal Feeding Operations, EPA ICR No. 1989.03, OMB Control No. 2040–0250; NPDES Modification and Variance Requests, EPA ICR No. 0029.09, OMB Control No. 2040–0068; NPDES and Sewage Sludge Management State Programs, EPA ICR No. 0168.09, OMB Control No. 2040–0057.

Docket ID No. EPA–HQ–OW–2006–0138

Affected entities: Entities potentially affected by this action are publicly owned treatment works (POTWs), privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, treatment works treating domestic sewage (TWTDS), and other entities that apply for NPDES permits.

Title: Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits.

ICR numbers: EPA ICR No. 0226.18, OMB Control No. 2040–0086.

ICR status: This ICR is currently scheduled to expire on June 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: This ICR calculates the burden and costs associated with permit applications for NPDES discharges and sewage sludge management activities. EPA uses the data contained in applications and supplemental information requests to set appropriate permit conditions, issue permits, and assess permit compliance. EPA maintains certain national application information in databases that assist permit writers in determining permit conditions. For most permits, EPA has developed standard application forms. In some cases, such as requests for additional information and storm water applications from municipal separate sewer systems, standard forms do not exist because standard forms are not appropriate for the information collected or because they have not been developed. Application forms correspond to the different types of applicants, each form requesting information necessary for issuing permits to the associated applicants. Applicants include POTWs, privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, TWTDS, and others. Depending on the application form they are using, applicants may be required to supply information about their facilities, discharges, treatment systems, sewage sludge use and disposal practices, pollutant sampling data, or other relevant information. Section 308 of the Clean Water Act authorizes EPA to request from dischargers any information that may be reasonably required to carry out the objectives and provision of the Act. Under this authority, EPA sometimes requests information supplemental to that contained in permit applications. In its burden and cost calculations, this ICR includes requests for information supplemental to permit applications. Other parts of the Clean Water Act and

federal regulations authorize EPA to collect information that supplements permit applications, such as section 403(c). This ICR calculates the burden and costs for all information collection activities associated with applications for permits. Application information is necessary to obtain an NPDES or sewage sludge permit.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average five hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 291,898.

Frequency of response: Once every five years.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 1,398,737 hours.

Estimated total annual costs: $53,546,023. This includes an estimated burden cost of $53,546,023 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Further, as part of this ICR renewal, EPA plans to transfer 1,244 burden hours from Milestones Plans for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category, EPA ICR No. 1877.03, OMB Control No. 2040–0202, to this ICR, which would bring the estimated total annual burden hours noted above to 1,399,981. The remaining 174 burden hours from EPA ICR No. 1877.03, will be transferred to NPDES Compliance Assessment/Certification Information, EPA ICR No. 1427.07, OMB Control No. 2040–0110. EPA ICR No. 1877.03 subsequently will be phased out.

Docket ID No. EPA–HQ–OW–2003–0011

Affected entities: Entities potentially affected by this action are those which have storm water discharges associated with large construction activity (40 CFR 122.25(b)(14)(x)) to waters of the U.S.

Title: Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit.

ICR numbers: EPA ICR No. 1842.05, OMB Control No. 2040–0188.

ICR status: This ICR is currently scheduled to expire on June 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: This ICR calculates the burden and costs associated with the preparation of the Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit, and the Storm Water Pollution Prevention Plan (SWPPP). EPA uses the data contained in the NOIs to track facilities covered by the storm water general permit and assess permit compliance. EPA has developed a form for construction NOIs. The standard one page form is called: Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity Under a NPDES General Permit (EPA Form Number 3510–6). The construction NOI form requires the following information to be submitted, signed, and certified to by an authorized representative of the project:

—Name, address, phone number of the facility.
—Status of the owner/operator (whether federal, state, public, or private).
—Name and location of the project (City, State, ZIP, Latitude, Longitude, County).
—Whether the facility is located on Indian Country Lands.
—Whether a Storm Water Pollution Prevention Plan (SWPPP) has been prepared.
—Optional: location for viewing SWPPP and telephone number for scheduling viewing times: Address, City, State, ZIP.
—The name of the receiving water.
—Estimated construction start date and completion date.
—The estimated area to be disturbed (to nearest acre).
—An estimate of the likelihood of discharge.
—Whether any protected species or critical habitat in the project area.
—Which section of part I.B.3.e(2) of the permit through which permit eligibility with regard to protection of endangered species is satisfied.

Respondents are required to obtain coverage under the NPDES General Permit for storm water discharges associated with construction activity.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38.3 hours per response by large construction NPDES permittees in NPDES-authorized states and territories and 40.5 hours per response for construction activities in states and territories where EPA is the permitting authority. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 201,259.

Frequency of response: Once initially, prior to commencement of construction

Estimated total average number of responses for each respondent: Two.

Estimated total annual burden hours: 7,920,245 hours.

Estimated total annual costs: $264,919,148. This includes an estimated burden cost of $264,919,148 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Docket ID No. EPA–HQ–OW–2002–0053

Affected entities: Entities potentially affected by this action are NPDES permittees, including operators of small municipal separate storm sewer

systems, small construction activity, and industrial facilities identified in 40 CFR 122.26(b)(14)(i)–(ix) and (xi) that qualify for a no exposure exemption.

Title: NPDES Storm Water Program Phase II.

ICR numbers: EPA ICR No. 1820.04, OMB Control No. 2040–0211.

ICR status: This ICR is currently scheduled to expire on June 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: This ICR calculates the burden and costs associated with the regulation of storm water discharges under Phase II of the NPDES storm water program. Specifically, it calculates the burden for developing and implementing small MS4 storm water permits, small construction (1–5 acres) permits, and submitting a no-exposure certification form (EPA form 3510–11). The ICR also specifies the burden on authorized NPDES States to process and administer the Phase II program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 327,163.

Frequency of response: Varies.

Estimated total average number of responses for each respondent: Varies.

Estimated total annual burden hours: 4,958,353 hours.

Estimated total annual costs: $142,543,556. This includes an estimated burden cost of $142,543,556 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Docket ID No. EPA–HQ–OW–2006–0136

Affected entities: Entities potentially affected by this action are owners and operators of Concentrated Animal Feeding Operations (CAFOs).

Title: NPDES and ELG Regulatory Revision for Concentrated Animal Feeding Operations.

ICR numbers: EPA ICR No. 1989.03, OMB Control No. 2040–0250.

ICR status: This ICR is currently scheduled to expire on July 31, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: This ICR calculates the burden and costs associated with the NPDES and ELG regulations for Concentrated Animal Feeding Operations (CAFOs). These regulations regulate land application of manure, litter and wastewater generated at CAFO facilities. The rule requires all facilities defined as a CAFO to apply for a NPDES permit.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 11,941.

Frequency of response: Varies.

Estimated total average number of responses for each respondent: Varies

Estimated total annual burden hours: 1,890,000 hours.

Estimated total annual costs: $7.9 million. This includes an estimated burden cost of $5.0 million and an estimated cost of $2.9 million for capital investment or maintenance and operational costs.

Docket ID No. EPA–HQ–OW–2002–0064

Affected entities: Entities potentially affected by this action are NPDES permit applicants that request a variance or modification of the NPDES or sewage sludge management conditions.

Title: NPDES Modification and Variance Requests.

ICR numbers: EPA ICR No. 0029.09, OMB Control No. 2040–0068.

ICR status: This ICR is currently scheduled to expire on November 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: This ICR estimates the burden and costs associated with modifications and variances made to NPDES permits and to National Sewage Sludge Management Program permit requirements. Prior to permit issuance, a NPDES permit applicant may request a variance from the conditions that would normally be imposed on the applicant's discharge. Although any interested party may request a variance, such requests are usually made by the applicant. An applicant must submit information so the permitting authority can assess whether the facility is eligible

for a variance, and what deviation is necessary. Once a NPDES or sludge-only permit is issued, a facility is subject to the permit limits and conditions for the life of the permit. However, events may occur during this period that would render the permit limits or conditions inappropriate. Responding to such events may require a modification of the NPDES or sewage sludge management permit conditions. The causes that can lead to permit modifications are established in 40 CFR 122.62 and 122.63. The regulations specify information a facility must report in order for EPA to determine whether a permit modification is warranted. Each provision requires similar information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 13,137.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: Varies.

Estimated total annual burden hours: 303,997 hours.

Estimated total annual costs: $10,952,021. This includes an estimated burden cost of $10,952,021 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Docket ID No. EPA–HQ–OW–2006–0139

Affected entities: Entities potentially affected by this action are States, Territories, and American Indian Tribal Entities.

Title: NPDES and Sewage Sludge Management State Programs.

ICR numbers: EPA ICR No. 0168.09, OMB Control No. 2040–0057.

ICR status: This ICR is currently scheduled to expire on November 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: This ICR estimates the burden and costs associated with NPDES and Sewage Sludge Management State Programs. Under the NPDES program, States, Federally Recognized Indian Tribes, and U.S. Territories, hereafter referred to as States, may acquire the authority to issue permits. These governments have the option of acquiring authority to issue general permits (permits that cover a category or categories of similar discharges). States with existing NPDES programs must submit requests for program modifications to add pretreatment, Federal facilities, or general permit authority. In addition, as Federal statutes and regulations are modified, States must submit program modifications to ensure that their program continues to meet Federal requirements. States have the option of obtaining a sludge management program. This program may be a component of a State NPDES Program, or it may be administered by a separate program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 50.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 613.

Frequency of response: Semi-annually, quarterly, on occasion, every five years, on-going.

Estimated total average number of responses for each respondent: Varies.

Estimated total annual burden hours: 966,966 hours.

Estimated total annual costs: $30,169,349. This includes an estimated burden cost of $30,169,349 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Dated: February 28, 2006.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. E6–3153 Filed 3–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8041–3]

Control of Emissions From New and In-Use Highway Vehicles and Engines: Approval of New Scheduled Maintenance for Diesel Particulate Filters in Certain Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has established a minimum interval of 80,000 miles (or 2400 hours) for the scheduled maintenance (cleaning) of diesel particulate filters used in some space-constrained truck applications. This minimum interval applies for model years 2007–2009. Diesel particulate filter cleaning is considered critical emission-related maintenance.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 343–9256. E-mail address: *dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION: The Agency adopted new emission standards for heavy-duty diesel engines (HDDEs) in 2001 (66 FR 5002; January 18, 2001). These standards will result in the introduction of new highly-effective

control technologies, beginning with a phase-in over the 2007–09 model years. We expect that diesel particulate filters (DPFs), also called particulate traps, will be used to meet the new standards on HDDEs beginning in 2007.

The Agency has received information from two heavy-duty engine manufacturers, Caterpillar, Inc. and DaimlerChrysler, indicating that it is technologically necessary to perform the cleaning of uncombusted deposits from DPFs in certain space-constrained truck applications more frequently than at the minimum maintenance interval prescribed for this activity in 40 CFR 86.004–25(b)(4)(iii). These applications use engines in the medium- and heavy-heavy-duty service classes. One reason this minimum interval is included in the regulations is to ensure that the control of emissions in use is not compromised by a manufacturer's overly frequent scheduling of emission-related maintenance. However, § 86.094–25(b)(7)(ii) provides a process by which a manufacturer may request EPA approval of new scheduled maintenance, provided that such requests include supporting data and other substantiation for the recommended maintenance category (emission-related or non-emission-related, critical or non-critical) and for the interval suggested for emission-related maintenance.

The information received from the manufacturers pertains to the technologically necessary maintenance interval only and not to the appropriate maintenance category for DPF cleaning. The Agency has already determined that DPFs (particulate traps) are critical emission-related components (*see* § 86.004–25(b)(6)(i)(G)). Based on our review of the manufacturers' data, we have established a technologically necessary minimum maintenance interval of 80,000 miles (or 2400 hours) for DPF cleaning on a number of specialty vehicle applications, primarily in the medium-heavy-duty service class. None of these are applications with high sales volumes such as line-haul trucks or heavy-duty pick-up trucks.

The truck applications covered by this notice are those in which the application's purpose imposes severe space constraints on the situating of exhaust system components. The DPF units being designed for use in 2007 vehicles are somewhat larger than the mufflers that they replace, and are sized such that they include sufficient excess filter volume to store the uncombustible ash that normally accumulates between cleanings. There are steps a manufacturer can take to minimize the DPF volume needed for ash build-up, such as through redesigning the engine to burn less lubricating oil, which in turn lowers the oil-derived ash accumulation rate. Our review of the information provided by the manufacturers indicates that they have taken reasonable steps to limit ash build-up through such means, but that the resulting filter volumes are still too large to fit in the space available. However, a modest decrease in the filter volume reserved for ash build-up, made possible through the more frequent scheduling of routine cleaning, results in a DPF small enough to fit in these applications.

Based on a review of the information provided by the manufacturers, we have concluded that the following truck applications have space constraints that warrant this shorter minimum allowable maintenance interval:

- Beverage truck;
- Maintenance truck with integral tool boxes;
- Garbage collection truck with hydraulic packing or picking apparatus;
- Fire truck;
- Airport refueler truck with exhaust directed toward the front of the truck;
- Utility truck with integral tool boxes and outrigger apparatus;
- Snow plow with under-chassis plow;
- Dump truck;
- Concrete mixer truck;
- Car hauler with integral open racks;
- Street sweeper;
- Armored car;
- Day cab truck (only those for which the entire DPF is located in front of the vertical plane established by the back side of the cab, and which furthermore do not have a rear seat).

Any manufacturer of engines used in applications on this list could make use of this provision. This minimum interval applies only to vehicles with engines in the medium- and heavy-HDDE service classes (that is, with gross vehicle weight ratings above 19,500 lbs); no information was provided establishing such a need in the light-HDDE service class. The functional needs of the applications in this list typically preclude the routing of exhaust systems in a vertical stack or in the space behind the cab outside the frame rails. However, if any model year 2007–09 trucks in this list are in fact designed with a DPF mounted in a vertical stack or in the space behind the cab outside the frame rails, they will not be eligible for the 80,000 mile minimum interval because no case has been established for space limitations in such designs. Also, if an engine family is used in multiple truck applications, some of which are not included in the above list, the engines used in ''non-listed'' applications are not eligible for the 80,000 mile minimum interval. For these engines the manufacturer must provide the owners with proper maintenance instructions that specify the applicable interval, as required under § 86.087–38.

In addition, to make use of this 80,000 mile minimum maintenance interval, manufacturers must indicate their intention in the applications for certification. They must also state their intent to help ensure that the smaller DPFs will only be installed in the approved truck applications, and must show the reasonable likelihood of the maintenance being performed in use as required under CFR § 86.004–25(b)(6), with consideration given to the shorter specified maintenance interval.

Although the 80,000 mile interval is significantly shorter than the nominal 150,000 mile interval that would otherwise apply, there are a number of factors helping to provide confidence that this maintenance is as likely to be properly performed on schedule. First, the covered vehicle applications are commercial in nature. In general, routine maintenance on commercial vehicles is more likely to be performed on schedule to avoid the costly job delays, customer dissatisfaction, workforce idling, and emergency repairs arising from component failures in the field, and also of course to avoid jeopardizing warranty coverage. Second, many of these vehicles are not typically driven over large distances during the course of a year. As a result, filter cleaning at 80,000 mile (or 2400 hour) intervals is not likely to be so frequent as to irritate vehicle operators or hamper them from accomplishing their daily tasks, which might in turn cause them to neglect the needed cleaning. Third, the continued build-up of ash from a lack of cleaning would increase engine backpressure, resulting in loss of power, poor fuel economy, and eventually vehicle stalling. Commercial vehicle drivers and maintenance technicians are likely to be well aware of these serious consequences from neglected maintenance. Fourth, we expect that most or all manufacturers will provide a visible signal or some similar indication to inform a driver of the need for filter cleaning, thus reducing reliance on manual tracking of vehicle mileage to provide the needed reminder that maintenance is due. Finally, DPF cleaning is covered under the ''critical emission-related components'' provision of 40 CFR 86.004–25(b)(6). Thus, manufacturers are ''required to show the reasonable likelihood of such maintenance being performed in use.'' A

number of means are available to make this showing, including the visible signal indication mentioned above.

We are limiting this determination to the 2007–2009 model years for two reasons. First, we believe that the problem of redesigning the covered vehicles to accommodate DPFs, though a matter of technological necessity, arises largely from the time remaining before 2007, which precludes manufacturers performing an extensive redesign of these space-constrained vehicles to accommodate the DPFs. Given more time, the somewhat larger DPFs needed to achieve 150,000 mile cleaning intervals could be accommodated in vehicle designs without compromising mission objectives.

Second, the compliance strategies being chosen by the engine manufacturers generally entail a two step approach to meeting the new NO_X standards, such that NO_X aftertreatment devices will not be employed until 2010, and engine/vehicle designs will remain stable through the 2007–2009 phase-in period. Although the technology choices for 2010 NO_X control have not yet been made, we think it likely that new exhaust system space requirements will be added to those entailed by the use of DPFs in 2007. Given that three additional years of leadtime are available before 2010, and that adjusting the DPF cleaning interval can contribute, at best, only modest relief to these space constraint problems, we expect manufacturers to rely on broader vehicle redesigns rather than on shorter cleaning intervals to resolve any such problems. Should that process identify applications in which shorter DPF cleaning intervals are still technologically necessary for 2010 and later heavy-duty vehicles, we would expect manufacturers to take this up with us in a timely manner.

Dated: February 27, 2006.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E6–3146 Filed 3–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8041–1]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, P.L. 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board. The Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The purpose of the meeting is to discuss the recommendations of the Board's 9th Report on Air Quality and Transportation and Cultural and Natural Resources. The Board will also hear from speakers about the topic of its next report: Balancing Border Security and Environmental Protection. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Tuesday, March 14, from 9 a.m. (registration at 8:30 a.m.) to 5:30 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, Terrace Ballroom, 1515 Rhode Island Avenue, NW., Washington, DC. Telephone: 202–232–7000. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, *koerner.elaine@epa.gov,* 202–233–0069, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the Board should be sent to Elaine Koerner, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Elaine Koerner at 202–233–0069 or *koerner.elaine@epa.gov.* To request accommodation of a disability, please contact Elaine Koerner, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 22, 2006.

Elaine Koerner,

Designated Federal Officer.

[FR Doc. E6–3152 Filed 3–6–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 06–354]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 2, 2006, the Commission released a public notice announcing the March 14, 2006 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda. (This notice is not being published in the **Federal Register** at least 15 days prior to the meeting due to the press of other business).

DATES: Tuesday, March 14, 2006, 9:30 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: March 2, 2006. The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, March 14, 2006, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on

the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Proposed Agenda—Tuesday, March 14, 2006, 9:30 a.m.*

1. Announcements and Recent News.
2. Approval of Minutes.

—Meeting of November 30, 2005.
—Meeting of January 24, 2006.

3. Report of the North American Numbering Plan Administrator (NANPA).
4. Report of the National Thousands Block Pooling Administrator (PA).
5. Report of the North American Portability Management (NAPM) LLC.
6. Status of the Industry Numbering Committee (INC) activities.
7. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent.
8. Report of the Billing & Collection Working Group (B&C WG).
9. Reports from the Issues Management Groups (IMGs). —

NANC Operating Manual IMG.

10. Report of the Local Number Portability Administration (LNPA) Working Group.
11. Report of the Numbering Oversight Working Group (NOWG).
12. Report of the Future of Numbering Working Group (FoN WG).

—Including report of pANI IMG.

13. Special Presentations (None scheduled).
14. Update List of the NANC Accomplishments.
15. Summary of Action Items.
16. Public Comments and Participation (5 minutes per speaker).
17. Other Business.

Adjourn no later than 5 p.m.

Next Meeting: Tuesday, May 16, 2006.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 06–2193 Filed 3–6–06; 8:45 am]

BILLING CODE 6712–01–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 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 April 3, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Capitol Bancorp Development Limited IV, and Asian American Financial Services, Inc., all of Lansing, Michigan; to acquire 51 percent of the voting shares of Asian Bank of Arizona (in organization), Phoenix, Arizona.

In connection with this application, Capitol Bancorp Development Limited IV and Asian America Financial Services, Inc., have applied to become bank holding companies.

Board of Governors of the Federal Reserve System, March 2, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3165 Filed 3–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, March 13, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System emplyees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m., two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 3, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–2196 Filed 3–3–06; 2:23 pm]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers

or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—01/31/2006			
20060466	Liberty Media Corporation	Provide Commerce, Inc	Provide Commerce, Inc.
20060492	Macquarie Bank Limited	The Baldwin County Bridge Company, LLC.	The Baldwin County Bridge Company, LLC.
20060497	J.H. Whitney VI, L.P	AECOM Technology Corporation	AECON Technology Corporation.
20060501	Macquarie Bank Limited	Smarte Carte Corporation	Smarte Carte Corporation.
20060513	AmerisourceBergen Corporation	American Capital Strategies, Ltd	Network for Medical Communications & Research, LLC.
20060519	Google, Inc	dMarc Broadcasting, Inc	dMarc Broadcasting, Inc.
20060523	Long Point Capital Fund II, L.P	Steve W. Fowler	Commerical Grading, Inc.
20060524	Jabil Circuit, Inc	Celetronix International, Ltd	Celetronix International, Ltd.
20060526	Apax Europe VI–A, L.P	Tommy Hilfiger Corporation	Tommy Hilfiger Corporation.
20060527	JAKKS Pacific, Inc	Geoffrey R. Greenberg	Creative Designs International, Ltd.
20060533	LS Power Equity Partners, L.P	Duke Energy Corporation	Casco Bay Energy Company, LLC, Duke Bridgeport Energy, LLC, Duke Energy Arlington Valley, LLC, Duke Energy Mohave, LLC, Duke Energy Morro Bay, LLC, Duke Energy Moss Landing, LLC, Duke Energy Mulberry, LLC, Duke Energy Oakland, LLC, Duke Energy South Bay, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—02/01/2006			
20051001	Comcast Corporation	Adelphia Communications Corporation.	Adelphia Communications Corporation.
20051002	Comcast Corporation	Time Warner, Inc	Cable Holdco Exchange III, LLC, Cable Holdco Exchange II, LLC, Cable Holdco Exchange I, LLC, Cable Holdco Exchange IV, LLC, Cable Holdco Exchange VI, LLC, Cable Holdco Exchange V, LLC, Cable Holdco III, LLC, Cable Holdco II, Inc., Cable Holdco Inc.
20051003	Time Warner, Inc	Comcast Corporation	CAC Exchange I, LLC, CAC Exchange II, LLC, C AP Exchange I, LLC, C-Native Exchange III Trust, C-Native Exchange II Trust, C-Native Exchange I, LLC.
20051004	Time Warner, Inc	Adelphia Communications Corporation, a debtor-in-possession.	Adelphia Communications Corporation, a debtor-in-possession.
20060372	Hasbro, Inc	Marvel Entertainment, Inc	Marvel Characters, Inc.
20060478	Cintas Corporation	Van Dyne-Crotty, Inc	VDC Dyne-Crotty, Inc., VDC Rental LLC.
20060481	Allied Capital Corporation	ChemPro, Inc	ChemPro, Inc.
20060493	EQT IV No. 1 L.P	DaimlerChrysler AG	MTU Detroit Diesel UK Ltd., MTU Drive Shafts LLC, MTU Friedrichshafen GmbH, MTU South Africa (Pty.) Ltd.
20060496	Quad-C Partners VI, L.P	CFC International, Inc	CFC International, Inc.
20060506	WestView Capital Partners, L.P	Maurice J. Cunniffe	Radiac Abrasives, Inc.
20060509	Bain Capital Integral Investors, LLC.	Texas Instruments Incorporated	Texas Instruments (Changzhou) Co., Ltd., Texas Instruments (China) Company Limited, Texas Instruments de Mexico, S. de R.L. de C.V., Texas Instruments Electronicos do Brasil Ltda., Texas Instruments Holland B.V., Texas Instruments Hong Kong Limited, Texas Instruments Italia S.p.A., Texas Instruments Japan Limited, Texas Instruments Korea Limited, Texas Instruments Malaysia Sdn. Bhd., Texas Instruments Semiconductor Tech. (Shanghai) Co., Ltd.
20060534	Paul Tudor Jones II	Pegasus Solutions, Inc.	Pegasus Solutions, Inc.
20060535	GGC Investments II (BVI), L.P	Datastream Systems, Inc	Datastream Systems, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/02/2006			
20060440	Darling International Inc	National By-Products, LLC	National By-Products, LLC.

Trans. No.	Acquiring	Acquired	Entities
20060485	Becton Dickinson and Company	GeneOhm Sciences, Inc	GeneOhm Sciences, Inc.
20060517	Calix Networks, Inc	Optical Solutions, Inc	Optical Solutions, Inc.
20060528	Allscripts Healthcare Solutions, Inc.	A4 Health Systems, Inc	A4 Health Systems, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/03/2006			
20060470	SES Global S.A	New Skies Satellites Holdings Ltd	New Skies Satellites Holdings Ltd.
20060477	Sprint Nextel Corporation	Nextel Partners, Inc	Nextel Partners, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/06/2006			
20060104	Blackboard Inc	WebCT, Inc	WebCT, Inc.
20060536	Chesapeake Energy Corporation	Martex Drilling Company, L.L.P	Martex Drilling Company, L.L.P.
20060537	Aban Lloyd Chiles Offshore, Ltd	Transocean Inc	Transocean Holdings Inc.
20060538	Ronald E. Silva	Beverly Enterprises, Inc	Beverly Enterprises, Inc.
20060546	Dubai Holding LLC	Doncasters Group Limited	Doncasters Group Limited.
20060549	Trevor Lloyd	Richard L. Jackson	Surgical Information Systems, LLC.
20060558	Deutsche Post AG	Seapac, Inc	Seapac, Inc.
20060559	Nautic Partners V, L.P	Frederick J. Curtis, Jr	Curtis Industries Holdings, LLC, Curtis Industries, LLC.
20060571	UniCredito Italiano SpA	Emad A. Zirkry	Vanderbilt Capital Advisors, LLC.
20060582	Berkshire Hathaway Inc	Scottish Power plc	PacifiCorp.
20060585	NetLogic Microsystems, Inc	Cypress Semiconductor Corporation.	Lara Networks, Inc.
20060586	Knight Capital Group, Inc	FX Investment Settlement	Hotspot FX, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/07/2006			
20060543	Arcelor S.A	Dofasco Inc	Dofasco Inc.
20060547	Koninklijke Philips Electronic N.V	Lifeline Systems, Inc	Lifeline Systems, Inc.
20060572	Community Health Systems, Inc	Victory Health Services	Victory Ambulatory Services, Victory Care Centers, Victory Memorial Hospital, Vista Health—Saint Theresa Medical Center.
20060574	Nautic Partners V, L.P	H.I.G. Capital Partners III, L.P	WRI Acquisition, Inc.
20060577	The Home Depot, Inc	Cox Lumber Co	Cox Lumber Co.
20060593	1947 Limited Partnership	Regis Corporation	Regis Corporation.
TRANSACTION GRANTED EARLY TERMINATION—02/08/2006			
20060555	Duquesne Light Holdings, Inc	Pepco Holdings, Inc	Atlantic City Electric Company.
TRANSACTION GRANTED EARLY TERMINATION—02/09/2006			
20060483	U.S. Bancorp	First Horizon National Corporation	First Horizon Merchant Services, Inc, Global Card Services, Inc.
20060507	UnitedHealth Group Incorporated	Deere & Company	John Deere Health Care, Inc.
20060514	Applera Corporation	Ambion, Inc	Ambion, Inc.
20060560	Health Management Associates, Inc.	Ascension Health	St. Joseph Hospital, Augusta, Georgia, Inc, St. Joseph M.O.B., L.P., St. Joseph Ventures, Inc.
20060562	The Black & Decker Corporation	Vector Products, Inc	Vector Products, Inc.
20060576	Community Health Systems, Inc	Via Christi Health System, Inc	Via Christi Oklahoma Regional Medical Center-Ponca City, Inc.
20060595	Regis Corporation	Alberto-Culver Company	Sally Holdings, Inc.
TRANSACTION GRANTED EARLY TERMINATION—02/10/2006			
20060510	Mr. Ralph Esmerian	Fred Leighton and Glorya Leighton.	Fred Leighton, LLC, Fred Leighton, Ltd.
20060594	Genworth Financial, Inc	Randall Ray Baskin	American Continental Insurance Company, Continental Insurances Service, Inc., Continental Life Insurance Company of Brentwood, Tennessee.
20060597	Bain Capital Integral Investors, LLC.	Burlington Coat Factory Warehouse Corporation.	Burlington Coat Factory Warehouse Corporation.
20060599	Natural Gas Partners VIII, L.P	Duke Energy Corporation	Duke Energy Field Services, L.P.
20060600	Natural Gas Partners VIII, L.P	ConocoPhillips	Duke Energy Field Services, LP.
20060609	Central Garden & Pet Company	Charles B. Duff	Farnam Companies, Inc., Farnam Realty, Inc.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—02/14/2006			
20060606	Banco Santander Central Hispano, S.A.	Wells Fargo & Company	Island Finance Puerto Rico, Inc., Island Finance Sales Finance Corporation, Island Insurance Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—02/15/2006			
20060556	Icahn Partners L.P	Time Warner, Inc.	Time Warner, Inc.
20060625	Summit Ventures VI–A, L.P	Richard A. Chaifetz	ConfidentialSource, Inc., Comprehensive Behavioral Services, Inc., Comprehensive Psychological Centers, P.C., ComPsych Employee Assistance Programs, Inc., ComPsych International, Inc., ComPsych Japan, Inc., ComPsych Management Corporation, ComPsych Preferred Provider Administrators, Inc., ComPsych TPA, Inc., FinancialPoint Corporation, FMLA Source, Inc., LawPoint Corporation, NBM, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/16/2006			
20060615	Tracy W. Krohn	Kerr Mc-Gee Corporation	Kerr Mc-Gee Oil & Gas (Shelf) LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—02/17/2006			
20060565	Dana Corporation	DESC S.A. de C.V	Autometales, S.A. de C.V., Cardanes, S.A. de C.V., Corporacion Inmobillaria de Mexico, S.A. de C.V., DirecSpicer, S.A. de C.V., Ejes Tractivos, S.A. de C.V., Engranes Conicos, S.A. de C.V., Forjas Spicer, S.A. de C.V., Spicer Servicios, S.A. de C.V.
20060618	Sagittarius Brands, Inc	Kevin & Patricia Moriarty	Kerry Foods International, Inc.
20060620	Charlesbank Equity Fund VI, Limited Partnership.	Homes Acres Building Supply Co	Home Acres Building Supply Co.
20060626	De Agostini S.p.A	GTECH Holdings Corporation	GTECH Holdings Corporation.
20060627	F & H Acquisition Corp	Fox & Hound Restaurant Group	Fox & Hound Restaurant Group.
20060636	Black Bear Offshore Master Fund, L.P.	Telik, Inc	Telik, Inc.
20060648	Welsh, Carson, Anderson & Stowe X, L.P.	Verizon Communications, Inc	Caribe Information Investments Incorporated.
20060653	Gary and Mary E. West	Intrado, Inc	Intrado, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–2116 Filed 3–6–06; 8:45 am]

BILLING CODE 6750–01–M

GOVERNMENT ACCOUNTABILITY OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Thursday, April 6, 2006, from 8:30 a.m. to 4:30 p.m., in room 7C13 of the Government Accountability Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. The meeting is open to the public. Council discussions and reviews are open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minutes) presentation on Thursday afternoon.

Any interested person who plans to attend the meeting as an observer must contact Jennifer Allison, Council Assistant, 202–512–3423. A form of picture identification must be presented to the GAO Security Desk on the day of the meeting to obtain access to the GAO building. For further information, please contact Ms. Allison. Please check the Government Auditing Standards Web page (*http://www.gao.gov/govaud/ybk01.htm*) one week prior to the meeting for a final agenda.

[Public Law 67–13, 42 Stat. 20 (June 10, 1921)]

Dated: March 2, 2006.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 06–2126 Filed 3–6–06; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05AH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

A Comprehensive Evaluation of an Approach to Self-Management: ''Diabetes: Living My Best Life''—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

African-American women are twice as likely as white women to be diagnosed with diabetes, and two and one-half times as likely to die from diabetic complications. The onset of type 2 diabetes in African-American adults is attributable not only to a genetic link, but also to unhealthy lifestyle practices. The vast number of African-American women with type 2 diabetes report having a sedentary lifestyle and eating a diet high in fat. In addition to taking medications, lifestyle modifications, such as changes in diet, weight loss and participating in a low-impact exercise program, can significantly reduce the complications experienced by women with type 2 diabetes. Unfortunately, there is a scarcity of training and educational materials on type 2 diabetes targeting the African-American woman. The limited availability of targeted educational materials has undoubtedly contributed to an inability to manage and control this disease in this population and has resulted in a higher prevalence of disease-related co-morbidities. There is a need for innovative interventions that can be used in a variety of settings, and that feature culturally appropriate assets that will engage African-American women with type 2 diabetes in a proactive role in the treatment and management of their disease.

The proposed project is the evaluation of a CD-ROM educational program: ''Diabetes: Living My Best Life.'' This product has been developed to teach African American women with type 2 diabetes self-management skills. Social Learning Theory (SLT) informed the development of the product and the selection of the media elements. Selection of the information and tools was guided by input from an Advisory Board composed of professionals in the field and African American women with type 2 diabetes.

To evaluate this program there will be two questionnaires: A Pretest and a Posttest. The two questionnaires will include questions on:

- Respondent demographic information (Pretest only).
- Respondent use of computers (Pretest only).
- Knowledge of diabetes.
- Self-efficacy in addressing diabetes self-management issues.
- Diabetes self-care activities.
- Feeling of empowerment around diabetes self-management.
- Social learning theory elements (Posttest only).

Pretest and Posttest intervention data will be collected by computer. Burden estimates are based observation of African-American women with type 2 diabetes who completed a formal pilot test of the Pretest and Posttest forms. There are no costs to respondents except their time to participate in the survey. The annualized burden hours are 44.

ANNUALIZED BURDEN TABLE

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
African American women with Type 2 diabetes—Pretest	66	1	20/60
African American women with Type 2 diabetes—Posttest	66	1	20/60

Dated: February 28, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–3188 Filed 3–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-06–0010]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

The National Birth Defects Prevention Study (OMB 0920–0010)—Extension—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Birth Defects Prevention Study has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the 5 counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. From 1993 to 1996, DBDDD conducted the Birth Defects Risk Factor Surveillance (BDRFS) study, a case-control study of risk factors for selected birth defects. Infants with birth defects were identified through MACDP and maternal interviews, and clinical/laboratory tests were conducted on approximately 300 cases and 100 controls per year. Controls were selected from among normal births in the same population. In 1997 the BDRFS became the National Birth Defects Prevention Study (NBDPS). The major components of the study did not change.

The NBDPS is a case-control study of major birth defects that includes cases identified from existing birth defect surveillance registries in ten states (including metropolitan Atlanta). Control infants are randomly selected from birth certificates or birth hospital

records. Mothers of case and control infants are interviewed using a computer-assisted telephone interview. Parents are asked to collect cheek cells from themselves and their infants for DNA testing. Information gathered from both the interviews and the DNA specimens will be used to study independent genetic and environmental factors as well as gene-environment interactions for a broad range of carefully classified birth defects.

The program is requesting approval for an additional three years. There is no cost to the respondent other than their time. The total estimated annualized burden hours are 600.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Frequency of response	Average burden/response (in hours)
NBDPS case/control interview	400	1	1
Biologic specimen collection	1,200	1	10/60

Dated: February 27, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–3189 Filed 3–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-06–0006]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Exposure Registry—Extension—(OMB No. 0923–0006)—Agency for Toxic Substances and Disease Registry (ATSDR)—Centers for Disease Control and Prevention (CDC).

Background and Brief Description

ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to establish and maintain a national registry of persons who have been exposed to hazardous substances in the environment and a national registry of persons with illnesses or health problems resulting from such exposure. In 1988, ATSDR created the National Exposure Registry (NER) as a result of this legislation in an effort to provide scientific information about potential adverse health effects people develop as a result of low-level, long-term exposure to hazardous substances.

The NER is a program which collects, maintains, and analyzes information obtained from participants (called registrants) whose exposure to selected toxic substances at specific geographic areas in the United States has been documented. Relevant health data and demographic information are also included in the NER databases. The NER databases furnish the information needed to generate appropriate and valid hypotheses for future activities such as epidemiologic studies. The NER also serves as a mechanism for longitudinal health investigations that follow registrants over time to ascertain adverse health effects and latency periods.

Participants in each subregistry are interviewed initially with a baseline questionnaire. An identical follow-up telephone questionnaire is administered to participants every three years until the criteria for terminating a specific subregistry have been met. The annual number of participants varies greatly from year to year. Two factors influencing the number of respondents per year are the number of subregistry updates that are scheduled and whether a new subregistry will be established. There is no cost to the respondents other than their time. The total estimated annualized burden hours are 834.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of responses	Responses per respondent	Average burden per response (in hours)
NER Registrant	1,667	1	30/60

Dated: February 27, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–3190 Filed 3–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''Medicare Beneficiary Database (MBD),'' System No. 09–70–0536. This system was last published at 66 FR 63392 (December 6, 2001). The initial stage of development of the MBD contained data of interest to the Medicare Managed Care program. Since publication of the notice in 2001, all proposed phases of development for this system have been completed. We propose to broaden the scope of this system to collect and maintain data elements necessary for the new voluntary prescription drug benefit program required by Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). This new prescription drug benefit program was enacted into law on December 8, 2003, and amended Title XVIII of the Social Security Act (the Act). The regulations establishing the new Medicare ''Part D'' Prescription Drug Benefit program are codified at Title 42 of the Code of Federal Regulations (CFR), Parts 403, 411, 417 and 423.

Although the database has always contained the entire Medicare beneficiary population, the broadened scope of this modification will document the completion of the following phases: Phase II completed the development of data elements of interest to the Medicare Fee-For-Service Program; Phase III incorporated data elements necessary to implement the Medicare prescription drug discount card program; and Phase IV will complete the development of the MBD to include all provisions mandated by the MMA.

To more accurately reflect the information maintained in this system we will change any reference to the program under Part C of Title XVIII currently referred to as the ''Medicare+Choice Program'' to read the ''Medicare Advantage (MA) Program.'' The MA Program shall consist of the program under Part C of Title XVIII of the Act, to include MA and MA–PD. Information maintained in this system related to the MA and MA–PD shall be derived from the Medicare Advantage Prescription Drug System (MARx) (formerly known as the ''Medicare Managed Care System (MMCS)) System No. 09–70–4001.

Generally, coverage for the prescription drug benefit under Part D will be provided under PDPs, which will offer only prescription drug coverage. Under Part C, Medicare Managed Care Organizations will offer prescription drug coverage that is integrated with the health care coverage they provide to beneficiaries and will be referred to as Part C of the Medicare Program.

The broadened scope of the Part D benefit will include the following activities; (1) determination of the status of Medicare beneficiaries who are eligible for the Low Income Subsidy Program (LIS) and are deemed to receive certain drug benefits; and (2) auto-assignment/auto-enrollment of beneficiaries as required by the MMA, to include all LIS and deemed individuals who are not voluntarily enrolled in a drug plan, will automatically be assigned to a Prescription Drug Plan (PDP) or Medicare Advantage (MA) Prescription Drug Plan (MA–PD). Information will be received from state organizations and from the Social Security Administration (SSA) and the MBD will make the final determination as to the status of the beneficiary.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include grantees who perform a task for the agency. The modified routine use will remain as routine use number 1. We will also modify existing routine use number 5 to change the name from Peer Review Organizations to read Quality Improvement Organizations (QIO) and to reflect requirements established for QIOs related to the Medicare Part D Program. The modified routine use will remain as routine use number 5. We further propose to modify published routine use number 6 that permits disclosure to other insurers. We will expand the stated requirements related to coordination of benefits for the Medicare program, to implement the Medicare Secondary Payer (MSP) provisions, and to clarify CMS'' policy on disclosure of privacy protected data elements maintained in this system. The modified routine use will remain as routine use number 6.

We will modify the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by recent reorganizations and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this modified system is to provide CMS with a singular, authoritative, database of comprehensive data on individuals in the Medicare program to support ongoing and expanded program administration, service delivery modalities, and payment coverage options. This collection will contain a complete ''beneficiary insurance profile'' that reflects the individual Medicare and Medicaid health insurance coverage and Medicare health plan and demonstration enrollment. This system will also included data necessary to process certain activities associated with the new Medicare prescription drug benefit program. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support providers and suppliers of services for administration of Title XVIII; (4) assist third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) support Quality Improvement Organizations (QIO); (6) assist other insurers for processing individual insurance claims; (7) facilitate research on the quality and effectiveness of care provided, as well as payment related projects; (8) support constituent requests made to a congressional representative; (9) support litigation involving the agency; and (10) 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 routine uses, CMS invites comments on all portions of this

notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Date:* CMS filed a modified or altered SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 03/01/2006 . To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the congress, whichever is later. We may defer implementation of this system 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: Danielle Moon, Director, Division of Enrollment and Eligibility Policy, Medicare Enrollment and Appeals Group, Center for Beneficiary Choices, CMS, Mail Stop S1–05–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Her telephone number is 410–786–5724, and via e-mail at *Danielle.Moon@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: On December 8, 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). MMA amends the Social Security Act (the Act) by adding the Medicare Part D Program under Title XVIII and mandate that CMS establish a voluntary Medicare prescription drug benefit program effective January 1, 2006. Under the new Medicare Part D benefit, the Act allows Medicare payment to MA plans that contract with CMS to provide qualified Part D prescription drug coverage as described in 42 CFR parts 417 and 422.

As CMS' authoritative enterprise beneficiary database, it provides new sets of data that is not currently available in the Enrollment Database (EDB), MARx or the Medicaid Statistical Information System (MSIS). The MBD also maintains beneficiary data elements extracted from existing CMS systems of records: EDB, MARx and MSIS. The renamed EDB was established in 1965 to maintain accurate and complete data on Medicare enrollment and entitlement.

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under §§ 226, 226A, 1811, 1818, 1818A, 1831, 1833(a)(1)(A), 1836, 1837, 1838, 1843, 1866, 1876, 1881, and 1902(a)(6) of the Act and Title 42 United States Code (U.S.C.) 426, 1395c, 1395cc, 1395i–2, 1395i–2a, 1395j, 13951, 1395mm, 1395o, 1395p, 1395q, 1395rr, 1395v, and Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (Regulations as 42 CFR Parts 403, 411, 417 and 423).

B. Collection and Maintenance of Data in the System

This system contains information on individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Social Security Act (the Act) or under provisions of the Railroad Retirement Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less that 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act; individuals who have been, or currently are, entitled to such benefits because they have End-Stage Renal Disease (ESRD); individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month or entitlement to such benefits and those populations that are dually eligible for both Medicare and Medicaid (Title XIX of the Act).

Information maintained in the system include, but are not limited to: standard data for identification such as health insurance claim number, social security number, gender, race/ethnicity, date of birth, geographic location, Medicare enrollment and entitlement information, MSP data necessary for appropriate Medicare claim payment, hospice election, MA plan elections and enrollment, End Stage Renal Disease (ESRD) entitlement, historic and current listing of residences, and Medicare eligibility and Managed Care institutional status.

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 MBD 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 MBD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this 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 provide CMS with a singular, authoritative, database of comprehensive data on individuals in the Medicare program to support ongoing and expanded program administration, service delivery modalities, and payment coverage options.

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, consultants or grantees 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, consultant or grantee whatever information is necessary for the contractors, consultants or grantees to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' 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 MBD information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Internal Revenue Service may require MBD data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

In addition, other state agencies in their administration of a Federal health program may require MBD information for the purpose of determining, evaluating and/or assessing cost effectiveness, and/or the quality of health care services provided in the state.

The Railroad Retirement Board requires MBD information to administer provisions of the Railroad Retirement Act and Social Security Act relating to railroad employment and/or the administration of the Medicare program.

The Social Security Administration requires MBD data to enable them to assist in the implementation and maintenance of the Medicare program.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state who are residents of that state.

3. To providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require MBD information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contact in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and;

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third parties contacts require MBD information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans. As established by the Part D Program, QIOs will conduct reviews of prescription drug events data, or in connection with studies or other review activities conducted pursuant to Part D of Title XVIII of the Act.

QIOs will work to implement quality improvement programs, provide consultation to CMS, MA–PD, PDPs, and state agencies, to assist CMS in prescription drug event assessments, and prepare summary information for release to CMS.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity

assessment, and prepare summary information for release to CMS.

6. To other insurers, underwriters, third party administrators (TPAs), self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a state or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a state that assumes the liabilities of an insolvent insurers pool or fund), multiple-employers trusts, no-fault medical, automobile insurers, workers' compensation carriers plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting;

a. An individual's right to any such benefit or payment, or

b. The initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provisions at 42 U.S.C. 1395y(b). The information CMS may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Gender
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider Name and Number
- Physician Name and Number
- Supplier Name and Number
- Dates of Service
- Nature of Service
- Diagnosis

To administer the MSP provision at 42 U.S.C. 1395y(b)(2), (3), and (4) more effectively, CMS would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrator, self-insurers, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the MSP provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers' Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, CMS would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security number
- Name of Insured
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (Workers' Compensation Only)
- Name of insured could be the driver of the car, a business, the beneficiary (*i.e.*, the name of the individual or entity which carries the insurance policy or plan)

In order to receive this information the entity must agree to the following conditions:

c. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payer in accordance with Title 42 U.S.C. 1395y(b);

d. To safeguard the confidentiality of the data and to prevent unauthorized access to it; and

e. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program.

This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

To administer the MSP provisions more effectively, CMS may receive or disclose the following types of information from or to entities including insurers, underwriters, TPAs, and self-insured plans, concerning potentially affected individuals:

- Subscriber HICN
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurers or payer
- Dates of employment including termination date, if appropriate
- Number of full and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber, for example, full or part time or self-employed

Other insurers, HMO, and Health Care Prepayment Plans may require MBD information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

1860D–23 and 1860D–24 of the Act require that the Secretary establish requirements for prescription drug plans (Part D plans) to ensure the effective coordination between a Part D plan and a State Pharmaceutical Assistance Program (SPAP), as well as other payers of prescription drug benefits, including enrollment file sharing. CMS, using its coordination of benefits contractor, allows this to happen by having payers that will be secondary to Part D submit their enrollment data in exchange for Part D enrollment data. The data shared is mainly enrollment information (date of enrollment into Part D, what Part D plan they are enrolled with). SPAPs, but not other payers, will also receive data indicating whether the beneficiary qualifies for a low-income subsidy to pay for drug costs.

7. 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 MBD 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.

8. 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 to CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. 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.

10. 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.

11. 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 MBD information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise 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.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, 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 may apply 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; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the System of Records on Individual Rights

CMS proposes to modify 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 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.

Dated: March 1, 2006.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0536

SYSTEM NAME:

''Medicare Beneficiary Database (MBD), HHS/CMS/CBC.''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Social Security Act (the Act) or under provisions of the Railroad Retirement Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less that 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act; individuals who have been, or currently are, entitled to such benefits because they have End-Stage Renal Disease (ESRD); individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month or entitlement to such benefits and those populations that are dually eligible for both Medicare and Medicaid (Title XIX of the Act).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information maintained in the system include, but are not limited to: standard data for identification such as health insurance claim number, social security number, gender, race/ethnicity, date of birth, geographic location, Medicare enrollment and entitlement information, MSP data necessary for appropriate Medicare claim payment, hospice election, MA plan elections and enrollment, End Stage Renal Disease (ESRD) entitlement, historic and current listing of residences, and Medicare eligibility and Managed Care institutional status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under §§ 226, 226A, 1811, 1818, 1818A, 1831, 1833(a)(1)(A), 1836, 1837, 1838, 1843, 1866, 1876, 1881, and 1902(a)(6) of the Act and Title 42 United States Code (U.S.C.) 426, 1395c, 1395cc, 1395i–2, 1395i–2a, 1395j, 13951, 1395mm, 1395o, 1395p, 1395q, 1395rr, 1395v, and Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (Regulations as 42 CFR Parts 403, 411, 417 and 423).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this modified system is to provide CMS with a singular, authoritative, database of comprehensive data on individuals in the Medicare program to support ongoing and expanded program administration, service delivery modalities, and payment coverage options. This collection will contain a complete ''beneficiary insurance profile'' that reflects the individual Medicare and Medicaid health insurance coverage and Medicare health plan and demonstration enrollment. This system will also include data necessary to process certain activities associated with the new Medicare prescription drug benefit program. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support providers and suppliers of services for administration of Title XVIII; (4) assist third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) support Quality Improvement Organizations (QIO); (6) assist other insurers for processing individual insurance claims; (7) facilitate research on the quality and effectiveness of care provided, as well as payment related projects; (8) support constituent requests made to a congressional representative; (9) support litigation involving the agency; and (10) 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, consultants or grantees 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, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' 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 providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

4. To third party contact in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program; and

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's

entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans. As established by the Part D Program, QIOs will conduct reviews of prescription drug events data, or in connection with studies or other review activities conducted pursuant to Part D of Title XVIII of the Act.

6. To other insurers, underwriters, third party administrators (TPAs), self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a state or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a state that assumes the liabilities of an insolvent insurers pool or fund), multiple-employers trusts, no-fault medical, automobile insurers, workers' compensation carriers plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting:

a. An individual's right to any such benefit or payment, or

b. The initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provisions at 42 U.S.C. 1395y(b). The information CMS may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Gender
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider Name and Number
- Physician Name and Number
- Supplier Name and Number
- Dates of Service
- Nature of Service
- Diagnosis

To administer the MSP provision at 42 U.S.C. 1395y(b)(2), (3), and (4) more effectively, CMS would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrator, self-insurers, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the MSP provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers' Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, CMS would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number
- Name of Insured
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (Workers' Compensation Only)
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan)

In order to receive this information the entity must agree to the following conditions:

c. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payer in accordance with Title 42 U.S.C. 1395y(b);

d. To safeguard the confidentiality of the data and to prevent unauthorized access to it; and

e. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

To administer the MSP provisions more effectively, CMS may receive or disclose the following types of information from or to entities including insurers, underwriters, TPAs, and self-insured plans, concerning potentially affected individuals:

- Subscriber HICN
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurers or payer
- Dates of employment including termination date, if appropriate
- Number of full and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber, for example, full or part time or self-employed

7. 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.

8. 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.

9. 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.

10. 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.

11. 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: To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise 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.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, 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:

All Medicare records are accessible by HICN, and SSN search. This system supports both on-line and batch access.

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 may apply 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; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in the active files for a period of 15 years. The records are then retired to archival files maintained at the Health Care Data Center. 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, Division of Enrollment and Eligibility Policy, Medicare Enrollment and Appeals Group, Center for Beneficiary Choices, CMS, Mail Stop S1–05–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

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 CATEGORIES:

The data contained in this system of records are extracted from other CMS systems of records: Enrollment Database, Medicare Advantage Prescription Drug System, and the Medicaid Statistical Information System. Information will also be provided from the application submitted by the individual through state Medicaid agencies, the Social Security Administration and through other entities assisting beneficiaries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 06–2156 Filed 3–6–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Children's Bureau Proposed Research Priorities for Fiscal Years 2006–2008

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Correction: Notice of proposed child abuse and neglect research priorities for Fiscal Years 2006–2008.

SUMMARY: The Administration for Children and Families published a document in the **Federal Register** of February 3, 2006 (Volume 71, Number 23) Page 5855–5856 titled ''Notice of proposed child abuse and neglect research priorities for Fiscal Years 2006–2008.''

Contact information was omitted from the document.

Comments on this document should be directed to Catherine Howard electronically at *choward@acf.hhs.gov.* If sending a hard copy, please deliver to: Children's Bureau, Administration on Children, Youth and Families, Administration on Children and Families, U.S. Dept. of Health and Human Services, 1250 Maryland Ave., SW., 8th Floor, Washington, DC 20024. Electronic submissions are preferred.

Dated: February 9, 2006.

Reginia H. Ryan,

Director, Executive Secretariat, Administration on Children, Youth and Families.

[FR Doc. 06–2154 Filed 3–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants for Battered Women's Shelters and Related Assistance/ Grants to States

Program Office: Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS–2006–ACF–ACYF–FVPS–0123.

Announcement Title: Family Violence Prevention and Services/Grants for Battered Women's Shelters and Related Assistance/Grants to States.

CFDA Number: 93.671.

Due Date for Applications: April 6, 2006.

Executive Summary: This announcement governs the proposed award of mandatory grants under the Family Violence Prevention and Services Act (FVPSA) to States (including Territories and Insular Areas). The purpose of these grants is to assist States in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in Fiscal Year (FY) 2006.

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (FVPSA). FVPSA was first implemented in FY 1986. The statute was subsequently amended by Public Law 100–294, the ''Child Abuse Prevention, Adoptions, and Family Services Act of 1988;'' further amended in 1992 by Public Law 102–295; and then amended in 1994 by Public Law 103–322, the ''Violent Crime Control and Law Enforcement Act.'' FVPSA was amended again in 1996 by Public Law 104–235, the ''Child Abuse Prevention and Treatment Act (CAPTA) of 1996; in 2000 by Public Law 106–386, the ''Victims of Trafficking and Violence Protection Act,'' and amended further by Public Law 108–36, the ''Keeping Children and Families Safe Act of 2003.'' FVPSA was most recently amended by Public Law 109–162, the ''Violence Against Women and Department of Justice Reauthorization Act of 2005.''

FVPSA may be found at 42 U.S.C. 10401 *et seq.*

The purpose of this legislation is to assist States and Indian Tribes, Tribal organizations, and non-profit private organizations approved by an Indian Tribe in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

Background

During FY 2005, 237 grants were made to States and Indian Tribes, Tribal organizations, non-profit private organizations approved by Indian Tribes. The Department of Health and Human Services (HHS) also made 53 family violence prevention grant awards to non-profit State domestic violence coalitions.

In addition, HHS supports the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The four SIRCs are the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, Sacred Circle Resource Center for the Elimination of Domestic Violence Against Native Women, and the Health Resource Center on Domestic Violence. The purpose of NRC and SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February 1996, HHS funded the National Domestic Violence Hotline (NDVH) to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. NDVH is a 24-hour, toll-free service that provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The Hotline number is 1–800–799–SAFE (7233); the TTY number for the hearing-impaired is 1–800–787–3224.

General Grant Program Requirements Applicable to States

Definitions

States should use the following definitions in carrying out their programs. The definitions are found in section 320 of FVPSA.

Family Violence: Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, which includes shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

Related Assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, assistance for children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including

nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school-age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services by peers, individually or in groups, and referral to community social services;

(c) Transportation and technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

Annual State Administrators Grantee Conference

The annual grantee conference for the State FVPSA Administrators is a training and technical assistance activity. A subsequent Program Instruction and/or Information Memorandum will advise the State FVPSA Administrators of the date, time and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used (section 303(a)(2)(E)).

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the ''Stamp Out Domestic Violence Act of 2001'' (the Act), Public Law 107–62, to make available a ''semipostal'' stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, have been transferred to HHS in accordance with the Act for support of services to children and youth affected by domestic violence.

As a result of the transfer of $1.3 million in 2005, a grant offering was made for the development of ''Demonstration Programs for The Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence.'' Sixty-five (65) applications were received and reviewed. Nine (9) grant applications of approximately $130,000 each have been approved and are in the process of being funded. Detailed information on the successful applicants and their programs will be shared with State FVPSA Administrators upon official initiation of the grants.

The Importance of Coordination of Services

The impacts of family and intimate violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, HHS urges the designated State agencies receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

Documenting Our Work (DOW) Initiative

The need to accurately communicate reliable and appropriate data that captures the impact of domestic violence prevention work and to provide shelters, States and State domestic violence coalitions with tools for self-assessment continues as the DOW Initiative. In conjunction with representatives for State FVPSA programs, State domestic violence coalitions, and experts on both data collection and domestic violence prevention issues, the effort to develop informative, succinct and non-burdensome reporting formats will continue with the hope of concluding in this fiscal year. Any changes in informational needs and reporting formats will be accompanied by specifically designated workshops or adjuncts to regularly occurring meetings.

II. Funds Available

For FY 2006, HHS will make available for grants to designated State agencies 70 percent of the amount appropriated under section 310(a)(1) of FVPSA, which is not reserved under section 310(a)(2). In separate announcements, HHS will allocate 10 percent of the foregoing appropriation to the Tribes and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services, and 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, and advocacy services among other activities with local domestic violence programs and to encourage appropriate responses to domestic violence within the States.

Five percent of the amount appropriated under section 310(a)(1) of FVSPA, which is not reserved under section 310(a)(2), will be available in FY 2006 to continue the support for the NRC and the four SIRCs. Additional funds appropriated under FVPSA will be used to support other activities, including training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration projects as well as the ongoing operation of NDVH.

State Allocation

FVPSA grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State grant shall be $600,000 with the remaining funds allotted to each State on the same ratio as the population of the State has to the population of all States (section 304(a)(2)). State populations are determined on the basis of the most recent census data available to the Secretary of HHS and, the Secretary shall use for such purpose, if available, the annual current census data produced by the Secretary of Commerce pursuant to section 1818 of Title 13.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana

Islands will each receive grants of not less than one-eighth of one percent of the amounts appropriated (section 304(a)(1)).

Expenditure Period

FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, *i.e.*, FY 2006 funds may be used for expenditures from October 1, 2005, through September 30, 2007. Funds will be available for obligations only through September 30, 2006, and must be liquidated by September 30, 2007.

Re-allotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for re-allotment. FY 2006 grant funds that are made available to the States through re-allotment, under section 304(d)(2), must be expended by the State no later than September 30, 2008.

III. Eligibility

''States'' as defined in section 320 of FVPSA are eligible to apply for funds. The term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

In the past, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa have applied for funds as a part of their consolidated grant under the Social Services Block grant. These jurisdictions need not submit an application under this Program Announcement if they choose to have their allotment included as part of a consolidated grant application.

Additional Information on Eligibility

D–U–N–S Requirement

All applicants must have a D&B Data Universal Numbering System (D–U–N–S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D–U–N–S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D–U–N–S number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal, Grants.gov. A D–U–N–S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a D–U–N–S number. You may acquire a D–U–N–S number at no cost by calling the dedicated toll-free D–U–N–S number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

IV. Application Requirements

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0280, which expires October 31, 2008. 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.

Form and Content of Application Submission

The State's application must be submitted by the Chief Executive of the State and signed by the Chief Executive Officer or the Chief Program Official designated as responsible for the administration of FVPSA.

Each application must contain the following information or documentation:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under FVPSA and coordination of related programs within the State, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(D)).

(2) A plan describing in detail how the needs of underserved populations will be met, such as populations that are underserved due to ethnic, racial, cultural or language diversity, alienage status, geographic isolation, disability, or age (section 303(a)(2)(C)).

(a) Identify the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations. Describe the specific service environment, *e.g.*, new shelters; services for the battered, elderly, women of color, etc.

(c) Describe the public information component of the State's outreach program; the elements of your program that are used to explain domestic violence, the most effective and safe ways to seek help; tools to identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State Domestic Violence Coalitions, knowledgeable individuals, and interested organizations, and assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (sections 303(a)(2)(C) and 311(a)(5)).

(4) Provide a complete description of the process and procedures implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a grantee is in compliance with section 303(a)(2) as required by sections 303(a)(2)(C) and 311(a)(5).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under FVPSA (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds; a description of the target population; the number of shelters to be funded; the services the State will provide; and the expected results from the use of the grant funds (section 303(a)(2)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303 (a)(2)(F)).

Assurances

Each application must provide the following assurances:

(1) That grant funds under FVPSA will be distributed to local public agencies and non-profit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(2) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance, as defined in section

320(5)(A), to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(g)).

(3) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(4) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit, private organizations, particularly for those projects where the primary purpose is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(5) That grants funded by the States will meet the matching requirements in section 303(f), *i.e.*, not less than 20 percent of the total funds provided for a project under Chapter 110 of Title 42 of the U.S. Code (U.S.C.) with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in-kind; and the local share will not include any Federal funds provided under any authority other than this chapter (section 303(f)).

(6) That grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(7) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out FVPSA (section 303(e)).

(8) That the address or location of any shelter-facility assisted under FVPSA will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(9) That all grants, programs or other activities funded by the State in whole or in part with funds made available under FVPSA will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(10) That funds made available under the FVPSA will be used to supplement and not supplant other Federal, State and local public funds expended to provide services and activities that promote the purposes of the FVPSA (section 303(a)(4).

Certifications

All applications must submit or comply with the required certifications found in the Appendices as follows:

Anti-Lobbying Certification and Disclosure Form (See Appendix A): Applicants must furnish prior to award an executed copy of the Standard Form (SF) LLL, *Certification Regarding Lobbying*, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348–0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (See Appendix B): Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the Pro Children Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Certification Regarding Drug-Free Workplace Requirements (See Appendix C): The signature on the application by the chief program official attests to the applicant's intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application.

These certifications also may be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and part 100 do not apply.

Applications should be sent to:

Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: Ms. Sunni Knight, 1250 Maryland Avenue, SW., Room 8240, Washington, DC 20024.

V. Approval/Disapproval of a State Application

The Secretary of HHS will approve any application that meets the requirements of FVPSA and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a six-month period providing an opportunity for applicant to correct any deficiencies. The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

VI. Reporting Requirements

Performance Reports

Section 303(a)(4) requires that States file a performance report with HHS describing the activities carried out, and inclusion of an assessment of the effectiveness of those activities in achieving the purposes of the grant. Section 303(a)(5) requires that the State file a report that contains a description of the activities carried out with funds expended for State administrative costs.

A section of this performance report must be completed by each grantee or sub-grantee that performed the direct services contemplated in the State's application certifying performance of such services. State grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements as well as narrative examples of success stories about the services that were provided. The Performance Report should include the following data elements:

Funding—The total amount of the FVPSA grant funds awarded. The percentage of FVPSA funds as to total funding. The percentage of FVPSA funding used for shelters, and the percentage of funding used for related services and assistance.

Shelters—The total number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of women sheltered.
- The number of shelters in the State.
- The number of safe houses and shelter alternatives in the State.
- The number of non-shelter programs in the State.
- The number of young children sheltered (birth–12 years of age).
- The number of teenagers and young adults sheltered (13–18 years of age).
- The number of men sheltered.
- The number of elderly sheltered (55+ years of age).

- The number of elderly provided non-shelter services.
- The average length of shelter stay.
- The number of women, children, teens, and others that were turned away because shelter was unavailable.
- The number of women, children, teens, and others that were referred to other shelters due to a lack of space.

Types of individuals served (including special populations)—Record information by numbers and percentages against the total population served. Individuals and special populations served should include:

- Racial identification;
- Language (other than English);
- Geographically isolated from shelter (urban or rural);
- Persons with disabilities; and
- Other special needs populations.

Related services and assistance—List the types of related services and assistance provided to victims and their family members by indicating the number of women, children and men that have received services. Services and assistance may include, but are not limited to, the following:

- Individual counseling;
- Group counseling;
- Crisis intervention/hotline;
- Information and referral;
- Batterers support services;
- Legal advocacy services;
- Transportation;
- Services to teenagers;
- Emergency child care;
- Training and technical assistance;
- Housing advocacy; and
- Other innovative program activities.

Volunteers—List the total number of volunteers and hours worked.

Service referrals—List the number of women, children and men referred for the following services: (**Note:** Please indicate if the individual was identified as a batterer.)

- Alcohol abuse;
- Drug abuse;
- Batterer intervention services;
- Witnessed abuse;
- Emergency medical intervention; and
- Law enforcement intervention.

Narratives of success stories—Provide narratives of success stories of services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds, what particular priorities within the State were addressed and what special emphases were placed on these activities;
- A description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (*e.g.*, shelters, safe-houses, related assistance, programs for batterers);
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including populations under-served because of ethnic, racial, cultural, language diversity or geographic isolation were addressed;
- A description and assessment of the prevention activities supported during the program year, *e.g.*, community education events, and public awareness efforts; and
- A discussion of exceptional issues or problems arising, but not addressed in the application.

Performance Reports for the States are due on an annual basis at the end of the calendar year (December 29). Performance Reports should be sent to:

Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration on Children and Families, Attention: William D. Riley, 1250 Maryland Avenue, SW., Room 8238, Washington, DC 20024.

Please note that section 303(a)(4) of FVPSA requires HHS to suspend funding for an approved application if any State applicant fails to submit an annual Performance Report or if the funds are expended for purposes other than those set forth under this announcement.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF–269A is due December 29, 2006. The final SF–269A is due December 29, 2007. SF–269A can be found at *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

Completed reports may be mailed to:

Rachel Hickson, Division of Mandatory Grants, Office of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Grantees have the option to submit their reports online through the Online Data Collection (OLDC) system at the following address: *https://extranet.acf.hhs.gov/ssi.*

Failure to submit reports on time may be a basis for withholding grant funds, suspension or termination of the grant. All funds reported as unobligated after the obligation period will be recouped.

VII. Administrative and National Policy Requirements

States will comply with the applicable HHS recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR part 92.

Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

Faith-based and community organizations may reference the ''Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government'' at *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

VIII. Other Information

FOR FURTHER INFORMATION CONTACT: William D. Riley at (202) 401–5529 or e-mail at *WRiley@acf.hhs.gov*, or Sunni Knight at (202) 401–5319 or e-mail at *GKnight@acf.hhs.gov.*

Dated: February 23, 2006.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendices—Required Certifications:
A. Anti-Lobbying and Disclosure
B. Environmental Tobacco Smoke
C. Drug-Free Workplace Requirements

Appendix A: Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be

paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

Appendix B: Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix C: Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR part 76, subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance

of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code):

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. E6–3088 Filed 3–6–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop on Food and Drug Administration Clinical Trial Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Baltimore District, in cooperation with the Society of Clinical Research Associates (SoCRA), is announcing a workshop on FDA clinical trial statutory and regulatory requirements. This 2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards, and those who interact with them for the purpose of conducting FDA regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, May 17, 2006, from 8:30 a.m. to 5 p.m. and Thursday, May 18, 2006, from 8:30 a.m. to 4 p.m.

Location: The public workshop will be held at the Radisson Plaza Lord Baltimore, 20 West Baltimore St., Baltimore, MD 21201, 410–539–8400, FAX: 410–625–1060.

Contact: Marie Falcone, Food and Drug Administration, U.S. Customhouse, 200 Chestnut St., rm. 900, Philadelphia, PA 19106, 215–717–3703, FAX: 215–597–5798, e-mail: *Marie.Falcone@fda.hhs.gov.*

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and the registration fee of $550 (member), $625 (nonmember), or $500 (Government employee nonmember). (The registration fee for nonmembers includes a 1-year membership.) The registration fee for FDA employees is waived. Make the registration fee payable to SoCRA, P.O. Box 101, Furlong, PA 18925. To register via the Internet go to *http://www.socra.org/FDA_Conference.htm*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The registrar will also accept payment by major credit cards. For more information on the meeting, or for questions on registration, contact 800–SoCRA92 (800–762–7292), or 215–822–8644, or e-mail: *socramail@aol.com*. Attendees are responsible for their own accommodations. To make reservations at the Radisson Plaza Lord Baltimore hotel at the reduced conference rate, contact the Radisson Plaza Lord Baltimore hotel (see **LOCATION**) before April 17, 2006. The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials.

Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration. If you need special accommodations due to a disability, please contact Marie Falcone (see **CONTACT**) at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The workshop on FDA clinical trials statutory and regulatory requirements helps fulfill the Department of Health and Human Services and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. Topics for discussion at the workshop include the following: (1) FDA regulation of the conduct of clinical research;

(2) Medical device, drug, biological product and food aspects of clinical research;

(3) Investigator initiated research;

(4) Preinvestigational new drug application meetings and FDA meeting process;

(5) Informed consent requirements;

(6) Ethics in subject enrollment;

(7) FDA regulation of institutional review boards;

(8) Electronic records requirements;

(9) Adverse event reporting;

(10) How FDA conducts bioresearch inspections; and

(11) What happens after the FDA inspection.

FDA has made education of the research community a high priority to ensure the quality of clinical data and protect research subjects. The workshop helps to implement the objectives of section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: March 1, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–3229 Filed 3–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 of other forms of information technology.

Proposed Project: Sentinel Centers Network Technical Assistance Needs Assessment (NEW)

HRSA's Bureau of Primary Health Care (BPHC) established the Sentinel Centers Network (SCN) to assist in addressing critical quality, programmatic, and policy issues. Health centers submit core data periodically that is extracted from existing information systems. In order to assess needs for technical assistance (TA), information will be requested from centers regarding current information systems, updates/changes to information systems, and other TA needs. This information will be collected periodically via a project Web site and will be used to manage the ongoing needs of network participants.

The burden estimate for this project is as follows:

Form	Number of respondents	Number of responses per respondent	Total responses	Hours per response	Total burden hours
TA Inventory	38	4	152	.25	38

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received with 60 days of this notice.

Dated: March 1, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–3167 Filed 3–6–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at 301–443–1129.

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.

Proposed Project: Women's Physical Activity and Eating Tools Assessment: NEW

The HRSA Office of Women's Health (OWH) developed the Bright Futures for Women's Health and Wellness (BFWHW) Initiative to help expand the scope of women's preventive health activities, particularly related to nutrition and physical activity. Building upon a previous pilot study, an intermediate assessment of the BFWHW health promotion tools and materials related to physical activity and healthy eating will be conducted in order to identify characteristics of both individual and organizational change toward health and wellness associated with the uptake and use of the BFWHW tools. This data collection effort will ensure that the BFWHW tools are disseminated and utilized in the most effective ways, used to inform future BFWHW programming, and added to the literature regarding evidence-based women's health and wellness initiatives.

Towards this end, questionnaires will be used to collect data from adolescent and adult women clients, providers, and administrators of community health provider organizations. Data collected will include process, impact, and outcome measures. Data domains include the implementation and use of the BFWHW tools, including distribution and use; provider training; organizational characteristics related to successful implementation; client and provider awareness; attitudes about the importance of physical activity, nutrition and self-efficacy to take steps to make effective changes; increase in knowledge and intent to change behavior after exposure; and short-term outcomes related to improved preventive healthcare for women. A total of six organizations, which may include HHS Centers of Excellence and Community Centers of Excellence in

Women's Health, Federally Qualified Health Centers/Community Health Centers, faith-based organizations, and school-based health clinics, will be selected for the study. Adolescent and adult women patients of various racial and ethnic backgrounds will complete the anonymous questionnaires at these six organizations. The providers at these same sites will also be asked to complete a brief anonymous questionnaire. Telephone interviews will be conducted with an administrator of each of these sites as well. The data collection period is estimated to last four months.

The estimated response burden is as follows:

ESTIMATED DATA COLLECTION BURDEN HOURS

Activity	Number of respondents	Hours per response	Responses per respondent	Total burden hours
Client Questionnaire	3,000	.42	1	1,260
Provider Questionnaire	60	.33	1	20
Administrator Telephone Interview	6	1	1	6
Total	3,066	.....	.....	1,286

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 1, 2006.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–3168 Filed 3–6–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare, Laboratory Partnership, 245 Pall Mall Street, London, Ontario, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Kroll Laboratory Specialists, Inc.**, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180, (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.
MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, Onatario, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario), Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7897 x7
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.)
Quest Diagnostics Incorporated, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, ormerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
Quest Diagnostics Incorporated, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–606–6301/800–322–3361, (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.)
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

** The following laboratory had its suspension lifted on February 17, 2006: Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. 06–2175 Filed 3–6–06; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24047]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0046

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR is 1625–0046, Financial Responsibility for Water Pollution (Vessels). Before submitting the ICR to OMB, the Coast Guard is inviting comments on it as described below.

DATES: Comments must reach the Coast Guard on or before May 8, 2006.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2006–24047] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery 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. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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 also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 1900 Half Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on this document; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov;* they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2006–24047], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-stamped postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To review comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Request

Title: Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 1625–0046.

Summary: The Coast Guard will use the information collected under this information collection request to issue a Certificate of Financial Responsibility as required by the Oil Pollution Act (O.P.A.,) specifically under 33 U.S.C. 2716, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), specifically under 42 U.S.C. 9608.

Need: If the requested information is not collected, the Coast Guard will be unable to comply with the provisions of O.P.A. and CERCLA to ensure that responsible parties can be held accountable for cleanup costs and damages when there is an oil spill or threat of a spill.

Respondents: Legally responsible operators of vessels subject to 33 U.S.C. 2716 and 42 U.S.C. 9608 or their designees, and approved insurers and financial guarantors.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 2,262 hours a year.

Dated: February 27, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commander for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 06–2114 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24017]

Commercial Fishing Industry Vessel Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC). CFIVSAC advises and makes recommendations to the Coast Guard for improving commercial fishing industry safety practices.

DATES: Application forms should reach the Coast Guard at the location noted in **ADDRESSES** on or before April 1, 2006.

ADDRESSES: You may request an application form by writing to Commandant (G–PCV–3), U.S. Coast Guard, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Captain Michael B. Karr, Executive Director of CFIVSAC, or Mr. Mike Rosecrans, Assistant to the Executive Director, by telephone at 202–267–0505, fax 202–267–0506, e-mail: *MRosecrans@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) is a Federal advisory committee under 5 U.S.C. App. 2 as required by the Commercial Fishing Industry Vessel Safety Act of 1988. The Coast Guard established CFIVSAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing industry vessels regulated under Chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. (*See* 46 U.S.C. 4508.)

CFIVSAC consists of 17 members as follows: (a) Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of

vessels to which Chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; (b) one member representing naval architects or marine surveyors; (c) one member representing manufacturers of vessel equipment to which Chapter 45 applies; (d) one member representing education or training professionals related to fishing vessel, fish processing vessels, or fish tender vessel safety, or personnel qualifications; (e) one member representing underwriters that insure vessels to which Chapter 45 applies; (f) and three members representing the general public including, whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing the marine insurance industry.

CFIVSAC meets at least once a year. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet inter-sessionally to prepare for meetings or develop proposals for the committee as a whole to address specific problems.

We will consider applications for six positions that expire or become vacant in October 2006 in the following categories: (a) Commercial Fishing Industry (four positions); (b) Naval Architect or Marine Surveyor (one position); (c) General Public (one position).

Each member serves a 3-year term. Members may serve consecutive terms. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem are provided.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

You may request an application form by writing to Commandant (G–PCV–3), U.S. Coast Guard, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001; by calling 202–267–2854; by faxing 202–267–0506; or by e-mailing *RTrevino@comdt.uscg.mil.* This notice and the application are also available on the Internet at *www.uscg.mil/hq/g-m/cfvs.*

If you are selected as a member representing the general public, you maybe required to complete a Confidential Financial Disclosure Report (OGE Form 450). We will not release the report or the information in it to the public, except under an order issued by a Federal Court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: February 23, 2006.

Howard L. Hime,

Acting Director of Standards, Assistant Commandant for Prevention.

[FR Doc. E6–3148 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1628–DR]

California; Amendment No. 1 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 California (FEMA–1628–DR), dated February 3, 2006, and related determinations.

DATES: *Effective Date:* February 23, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 3, 2006:

El Dorado and Nevada Counties for Individual Assistance (already designated for Public Assistance.)

Shasta County for Individual Assistance.

Alameda County for Public Assistance.

(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. E6–3177 Filed 3–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3212–EM]

Louisiana; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3212–EM), dated August 27, 2005, and related determinations.

DATES: *Effective Date:* November 1, 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 the incident period for this emergency is closed effective November 1, 2005.

(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. E6–3178 Filed 3–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3260–EM]

Louisiana; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3260–EM), dated September 21, 2005, and related determinations.

DATES: *Effective Date:* November 1, 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 the incident period for this emergency is closed effective November 1, 2005.

(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. E6–3180 Filed 3–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3265–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3265–EM), dated February 24, 2006, and related determinations.

DATES: *Effective Date*: February 24, 2006.

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 February 24, 2006, the President declared an emergency declaration 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 impact in certain areas of the State of Maine, resulting from the record snow from December 25–27, 2005, is of sufficient severity and magnitude to warrant an emergency 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 an emergency exists in the State of Maine.

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 emergency protective measures under the Public Assistance program to save lives and protect public health, safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or approximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated area.

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, Department of Homeland Security, under Executive Order 12148, as amended, Peter J. Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared emergency:

Aroostook County for Public Assistance (Category B) emergency protective measures.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–3183 Filed 3–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3264–EM]

Massachusetts; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Massachusetts (FEMA–3264–EM), dated October 19, 2005, and related determinations.

DATES: *Effective Date:* October 22, 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 the incident period for this emergency is closed effective October 22, 2005.

(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. E6–3182 Filed 3–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3213–EM]

Mississippi; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3213–EM), dated August 28, 2005, and related determinations.

DATES: *Effective Date:* October 14, 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 the incident period for this emergency is closed effective October 14, 2005.

(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. E6–3179 Filed 3–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3261–EM]

Texas; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Texas (FEMA–3261–EM), dated September 21, 2005, and related determinations.

DATES: *Effective Date:* October 14, 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 the incident period for this emergency is closed effective October 14, 2005.

(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. E6–3181 Filed 3–6–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior; Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, March 10, 2006—1:30 p.m. to 4 p.m.

Address: Earth Conservancy, 101 S. Main Street, Ashley, PA 18706.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton, PA 18042. (610) 923–3458.

Dated: March 1, 2006.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 06–2146 Filed 3–6–06; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We (the U.S. Fish and Wildlife Service) announce the availability of the Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. This recovery plan covers 33 species, of which 20 are federally listed as threatened or endangered. These species inhabit vernal pool ecosystems in California and southern Oregon. This recovery plan includes recovery criteria and measures for 20 federally listed species. Federally endangered plants include *Eryngium constancei* (Loch Lomond button-celery), *Lasthenia conjugens* (Contra Costa goldfields), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Parvisedum leiocarpum* (Lake County stonecrop), *Tuctoria greenei* (Greene's tuctoria), and *Tuctoria mucronata* (Solano grass). Federally threatened plants include *Castilleja campestris* ssp. *succulenta* (fleshy owl's clover), *Chamaesyce hooveri* (Hoover's spurge), *Neostapfia colusana* (Colusa grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), and *Orcuttia tenuis* (slender Orcutt grass). Federally endangered animals include the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp

(*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*). Federally threatened animals include the vernal pool fairy shrimp (*Branchinecta lynchi*) and delta green ground beetle (*Elaphrus viridis*). The portions of the plan dealing with the delta green ground beetle and Solano grass are a revision of the 1985 Delta Green Ground Beetle and Solano Grass Recovery Plan.

The recovery plan addresses conservation of 10 plant species of concern, including *Astragalus tener* var. *ferrisiae* (Ferris' milk vetch), *Astragalus tener* var. *tener* (alkali milk vetch), *Atriplex persistens* (persistent-fruited saltscale), *Eryngium spinosepalum* (spiny-sepaled button-celery), *Gratiola heterosepala* (Boggs Lake hedge-hyssop), *Juncus leiospermus* var. *ahartii* (Ahart's dwarf rush), *Legenere limosa* (legenere), *Myosurus minimus* var. *apus* (little mouse tail), *Navarretia myersii* ssp. *deminuta* (pincushion navarretia), and *Plagiobothrys hystriculus* (bearded popcorn flower). The three animal species of concern addressed in the recovery plan include the mid-valley fairy shrimp (*Branchinecta mesovallensis*), California fairy shrimp (*Linderiella occidentalis*), and western spadefoot toad (*Spea hammondii*).

ADDRESSES: Copies of the recovery plan are available by request from the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California (telephone (916) 414–6600); Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California (telephone (760) 431–9440); Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California (telephone (805–644–1766); Southwest Oregon Field Office, 2900 NW., Stewart Parkway, Roseburg, Oregon (telephone (541) 957–3473); and Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California (telephone (707) 822–7201). An electronic copy of this recovery plan will also be made available on the World Wide Web at *http://pacific.fws.gov/ecoservices/endangered/recovery/plans.html* and *http://endangered.fws.gov/recovery/index.html#plans.* Printed copies of the recovery plan will be available for distribution in 4 to 6 weeks.

FOR FURTHER INFORMATION CONTACT: Betty Warne, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Draft Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon was available for public comment from November 18, 2004, through March 18, 2005 (69 FR 67601). Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so they can take these comments into account during the course of implementing recovery actions.

The 33 species covered in this recovery plan occur primarily in vernal pool, swale, or ephemeral freshwater habitats within California and southern Oregon and are largely confined to a limited area by topographic constraints, soil types, and climatic conditions. Surrounding (or associated) upland habitat is critical to the proper ecological function of these vernal pool habitats. Most of the vernal pool plants and animals addressed in the recovery plan have life histories adapted to the short period for growth and reproduction within inundated or drying pools interspersed with long dormant periods when pools are dry, and extreme year-to-year variation in rainfall. Threats to the species include habitat loss, fragmentation, and degradation due to urban development, recreation, agricultural conversion and practices, and altered hydrology; non-native invasive species; inadequate regulatory mechanisms; incompatible grazing regimes; and stochastic events. All species covered in the recovery plan primarily are threatened by the loss, fragmentation, or degradation of vernal pool habitat throughout the following areas: the Central Valley of California, the southern Sierra foothills, the Carrizo Plain, portions of the Coast Ranges, the Modoc Plateau, the Transverse Ranges, Los Angeles, and San Diego areas of California, and the Klamath Mountains region in Oregon. Therefore, areas currently, historically, or potentially occupied by the species are recommended for habitat protection and/or special management considerations.

The objectives of this recovery plan are to: (1) Ameliorate the threats that caused the species to be listed, and ameliorate any other newly identified threats in order to be able to delist these species; and (2) ensure the long-term conservation of the species of concern. These objectives will be accomplished through implementation of a variety of recovery measures including habitat protection, management and restoration; monitoring; reintroduction, introduction, and enhancement; research and status surveys; and public participation, outreach, and education.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 16, 2005.

Paul Henson,

Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 06–1984 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144809]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW144809

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

SUMMARY: Under the provisions of 371(a) of the Energy Policy Act of 2005, the lessees: Carpenter and Sons, Inc.; Goolsby and Associates, LLC; North Finn, LLC; Tika Energy Inc., and American Oil and Gas, Inc. timely filed a petition for reinstatement of noncompetitive oil and gas lease WYW144809 in Johnson County, Wyoming. The lessees paid the required

rental accruing from the date of termination, April 1, 2002.

No leases were issued that affect these lands. The lessees have agreed to the new lease terms for rentals of $5.00 per acre and royalties of 16⅔ percent or 4 percentages above the existing noncompetitive royalty rates. The lessees have paid the required $500 administrative fee for the reinstatement of the lease and $166 cost for publishing this Notice.

The lessees have met all the requirements for reinstatement of the lease per Section 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5.00 per acre; and
- The increased royalty of 16⅔ percent or 4 percentages above the existing noncompetitive royalty rates.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–3138 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144811]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW144811

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 371(a) of the Energy Policy Act of 2005, the lessees: Carpenter and Sons, Inc.; Goolsby and Associates, LLC; North Finn, LLC; Tika Energy Inc.; and American Oil and Gas, Inc. timely filed a petition for reinstatement of noncompetitive oil and gas lease WYW144811 in Johnson County, Wyoming. The lessees paid the required rental accruing from the date of termination, April 1, 2002.

No leases were issued that affect these lands. The lessees have agreed to the new lease terms for rentals of $5.00 per acre and royalties of 16⅔ percent or 4 percentages above the existing noncompetitive royalty rates. The lessees have paid the required $500 administrative fee for the reinstatement of the lease and $166 cost for publishing this Notice.

The lessees have met all the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5.00 per acre; and
- The increased royalty of 16⅔ percent or 4 percentages above the existing noncompetitive royalty rates.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–3139 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144810]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW144810

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 371(a) of the Energy Policy Act of 2005, the lessees: Carpenter and Sons, Inc.; Goolsby and Associates, LLC; North Finn, LLC; Tika Energy Inc.; and American Oil and Gas, Inc. timely filed a petition for reinstatement of noncompetitive oil and gas lease WYW144810 in Johnson County, Wyoming. The lessees paid the required rental accruing from the date of termination, April 1, 2002.

No leases were issued that affect these lands. The lessees have agreed to the new lease terms for rentals of $5.00 per acre and royalties of 16⅔ percent or 4 percentages above the existing noncompetitive royalty rates. The lessees have paid the required $500 administrative fee for the reinstatement of the lease and $166 cost for publishing this Notice.

The lessees have met all the requirements for reinstatement of the lease per Sec. 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5.00 per acre; and
- The increased royalty of 16⅔ percent or 4 percentages above the existing noncompetitive royalty rates.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–3140 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW127411]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW127411

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Nance Petroleum Corporation of noncompetitive oil and gas lease WYW127411 for lands in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate

lease WYW127411 effective September 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E6–3142 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–06–5870–HN]

Call for Public Nominations of Inholding Properties for Potential Purchase by the Federal Government in the State of California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Transaction Facilitation Act of 2000 (43 U.S.C. 2303) (FLTFA), this notice provides the public the opportunity to nominate inholding properties within the State of California for possible acquisition by the Federal agencies identified below.

DATES: Nominations may be submitted at any time following the publication of this notice.

ADDRESSES: Nominations should be mailed to the attention of the FLTFA Program Manager for the agency listed below having jurisdiction over the adjacent Federally designated area.

Bureau of Land Management, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825.

National Park Service, PWR–LP, 1111 Jackson Street, Suite 700, Oakland, CA 94607–4807.

U.S. Forest Service, 1323 Club Drive, Vallejo, CA 94592.

U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Joy Wehking, FLTFA Program Manager, BLM California State Office, phone 916–978–4647; e-mail *cafltfaprog@ca.blm.gov*, or visit BLM's Web site at *http://www.ca.blm.gov/pa/lands/fltfa*.

SUPPLEMENTARY INFORMATION: In accordance with the FLTFA, the four Federal agencies noted above are offering to the public at large the opportunity to nominate lands in the State of California for possible Federal acquisition. Under the provisions of FLTFA, only the following lands are eligible for nomination: (1) Inholdings within a Federally designated area; or (2) lands that are adjacent to Federally designated areas that contain exceptional resources.

An inholding is any right, title, or interest held by a non-Federal entity, in or to a tract of land that lies within the boundary of a Federally designated area.

A Federally designated area is an area, in existence on July 25, 2000, set aside for special management, including units of the national park, national wildlife refuge, and national forest systems; national monuments, national conservation areas, national riparian conservation areas, national recreation areas, national scenic areas, research natural areas, national outstanding natural areas, national natural landmarks, and areas of critical environmental concern managed by the Bureau of Land Management; wilderness or wilderness study areas; and units of the Wild and Scenic Rivers System or National Trails System. If you are not sure of whether a particular area meets the statutory definition in FLTFA, of a Federally designated area, you should consult the statute or contact the BLM as provided above.

Exceptional resource refers to a resource of scientific, natural, historic, cultural or recreational value that has been documented by a Federal, state, or local government authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.

Nominations meeting the above criteria may be submitted by any individual, group or governmental body. If submitted by a party other than the landowner, the landowner must also sign the nomination to confirm their willingness to sell. Nominations will only be considered eligible by the agencies if: (1) The nomination package is complete; (2) acquisition of the nominated land or interest in land would be consistent with an agency approved land use plan; (3) the land does not contain a hazardous substance or is not otherwise contaminated and would not be difficult or uneconomic to manage as Federal lands; and (4) acceptable title can be conveyed in accordance with Federal title standards. Priority will be placed on nominations for inholdings in areas where there is no local or tribal government objection to Federal acquisition.

The agencies will assess the nominations for public benefits and rank the nominations in accordance with a jointly prepared state level Interagency Implementation Agreement for FLTFA and a national level Interagency Memorandum of Understanding among the agencies. The nomination and identification of an inholding does not obligate the landowner to convey the property nor does it obligate the United States to acquire the property.

All Federal land acquisitions must be made at fair market value established by applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions.

Further information, including the required contents for a nomination package, and details of the Statewide Interagency Implementation Agreement, may be obtained by contacting Joy Wehking with the Bureau of Land Management at the address noted above, or by visiting the California FLTFA Web site at *http://www.ca.blm.gov/pa/lands/fltfa*.

Mike Pool,

State Director, California.

[FR Doc. E6–3141 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Western and Central Gulf of Mexico, Oil and Gas Lease Sales for Years 2007–2012

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Scoping Meetings.

1. Authority

The Notice of Intent (NOI) and notice of scoping meetings is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

2. Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provisions of the NEPA, MMS is announcing its intent to prepare an EIS on the tentatively scheduled 2007–2012 oil and gas leasing proposals in the Western and Central Gulf of Mexico (GOM), off the States of Texas, Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process for this EIS. Throughout the scoping process, Federal, State, and local government

agencies, and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives to be analyzed in the EIS. The EIS analysis will focus on the potential environmental effects of oil and natural gas leasing, exploration, development, and production in the areas identified through the Area Identification procedure as the proposed lease sale areas. Alternatives that may be considered for each sale are no action (*i.e.*, cancel the sale), or defer certain areas from the sale.

3. Supplemental Information

Federal regulations allow for several proposals to be analyzed in one EIS (40 CFR 1502.4). Since each sale proposal and projected activities are very similar each year for each sale area, MMS is proposing to prepare a single EIS (multisale EIS) for the five Western and six Central GOM annual lease sales scheduled for 2007–2012 in the draft proposed Outer Continental Shelf Oil and Gas Leasing Program: 2007–2012 (See 71 FR 7064, February 10, 2006). The multisale approach is intended to focus the NEPA/EIS process on differences between the proposed sales and on new issues and information. The multisale EIS will eliminate the repetitive issuance of complete draft and final EIS's for each sale area. The resource estimates and scenario information for the EIS analyses will be presented as a range that would encompass the resources and activities estimated for any of the eleven proposed lease sales. At the completion of this EIS process, decisions will be made only for the first proposed sale in each sale area, scheduled to be held in 2007 (Western) and 2007 (Central). Subsequent to these first sales, a NEPA review will be conducted for each of the other proposed lease sales in the 2007–2012 Leasing Program. Formal consultation with other Federal Agencies, the affected States, and the public will be carried out to assist in the determination of whether or not the information and analyses in the original multisale EIS are still valid. These consultations and NEPA reviews will be completed before decisions are made on the subsequent sales. For more information on the proposed sales or the EIS, you may contact Dennis Chew, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394 or e-mail *environment@mms.gov.* You may also contact Mr. Chew by telephone at (504) 736–2793.

4. Cooperating Agency

The MMS invites other Federal agencies and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the multisale EIS. We invite qualified government entities to inquire about cooperating agency status for the EIS. Following the guidelines from the Council of Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and to remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision making authority of any other agency involved in the NEPA process. Upon request, MMS will provide potential cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of predecisional information. MMS anticipates this summary will form the basis for a Memorandum of Understanding between the MMS and each cooperating agency. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. A copy of this document is available at: *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

The MMS, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process. If further information about cooperating agencies is needed, please contact Mr. Dennis Chew at (504) 736–2793.

5. Comments

Federal, State, local government agencies, and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered one of the following three ways:

1. Electronically using MMS's new Public Connect online commenting system at *https://ocsconnect.mms.gov.* This is the preferred method for commenting. From the Public Connect ''Welcome'' screen, search for ''WPA and CPA Multisale EIS 2007–2012'' or select it from the ''Projects Open for Comment'' menu.

2. In written form enclosed in an envelope labeled ''Comments on the Multisale EIS'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Electronically to the MMS e-mail address: *environment@mms.gov.*

Comments should be submitted no later than 45 days from the publication of this NOI.

6. Scoping Meetings

The MMS will hold scoping meetings to obtain additional comments and information regarding the scope of the EIS. The scoping meetings are scheduled as follows:

- Tuesday, March 28, 2006, Wyndham Greenspoint, 12400 Greenspoint Drive, Houston, Texas, 1 p.m.
- Wednesday, March 29, 2006, Hampton Inn and Suites New Orleans-Elmwood, 5150 Mounes Street, Harahan, Louisiana, 1 p.m.
- Thursday, March 30, 2006, Riverview Plaza Hotel, 64 South Water Street, Mobile, Alabama, 7 p.m.

The MMS is preparing a separate EIS for the new 5-year OCS oil and gas leasing program for proposed lease sales to be held from 2007–2012. MMS will also use the scoping meetings on the multisale EIS as an opportunity to solicit comments on the scope of the 5-year program EIS. Information concerning the 5-year program and EIS can be accessed at *http://www.mms.gov/5-year/2007-2012main.htm.*

Dated: February 24, 2006.

Thomas A. Readinger,

Associate Director, Offshore Minerals Management.

[FR Doc. E6–3145 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0061 and 1029–0110

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP), and two technical training program course effectiveness evaluation forms. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0061 and –0110, respectively.

DATES: Comments on the proposed information collection activities must be received by May 8, 2006 to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 202—SIB, Washington, DC 20240. Comments may be also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for renewed approval. These collections are contained in (1) 30 CFR Part 795, Permanent Regulatory Program—Small Operator Assistance Program (1029–0061); and (2) OSM's Technical Training Program Course Effectiveness Evaluations (1029–0110). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029–0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Frequency of Collection: Once per application.

Description of Respondents: Small operators, laboratories, and State regulatory authorities.

Total Annual Responses: 3.

Total Annual Burden Hours: 93 hours.

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029–0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 475.

Total Annual Burden Hours: 79 hours.

Dated: February 28, 2006.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 06–2120 Filed 3–6–06; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 002–2006]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice, Tax Division.

ACTION: Final Notice of Modification.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ), Tax Division, is modifying the following systems of records, ''Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases, Justice/TAX–001,'' previously published in full on February 20, 1998, (63 FR 8659) and amended on March 29, 2001 (66 FR 17200); ''Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases, Justice/TAX–002,'' previously published in full on February 20, 1998, (63 FR 8659) and amended on March 29, 2001 (66 FR 17200); ''Files of Applications for Attorney with the Tax Division, Justice/TAX–003,'' previously published on September 30, 1977, (42 FR 53390); and to eliminate the system of records, ''Tax Division Special Projects File, Justice/TAX–005,'' previously published on September 30, 1977 (42 FR 53391).

Specifically, the Justice/TAX–001 modifications are intended to change the system name; to disclose additional details as to what data is kept in paper-based files and in electronic-based files; to provide additional details as to how access to confidential taxpayer-related information and tax enforcement-related information is managed; to expand the categories of routine uses; to clarify the policies and practices through which the Justice/TAX–001 records are stored and retrieved; and to reflect the adoption of an electronic timekeeping function for Tax Division staff.

The Justice/TAX–002 modifications are intended to change the system name; to disclose additional details as to what data is kept in paper-based files and in electronic-based files; to provide additional details as to how access to confidential taxpayer-related information and tax enforcement-related information is managed; to expand the categories of routine uses; and to reflect the adoption of an electronic

timekeeping function for Tax Division staff.

The Justice/TAX–003 modifications are intended to change the system name, to include non-attorney applications; to disclose additional details as to what type of applicant information is maintained; and to show how access to applicant information is managed. Exemptions from the Privacy Act are claimed for this system of records and a separate Final Rule is published in today's **Federal Register**.

The deletion of Justice/TAX–005 is intended to eliminate a redundancy: many elements of Justice/TAX–005 system descriptions and the basis for its descriptions—criminal tax enforcement—are shared by Justice/TAX–001. Accordingly, the Tax Division believes it is appropriate to add the ''Special Projects'' to the Justice/TAX–001 system name, to incorporate the relevant elements of Justice/TAX–005 into Justice/TAX–001, and to delete Justice/TAX–005 on the effective date of the revised system notice for Justice/TAX–001.

DATES: *Effective Date:* The final notice for TAX–001, TAX–002, and TAX–003 is effective March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On November 16, 2005 (70 FR 69486), proposed modifications to Tax Division systems of records were published in the **Federal Register** with an invitation to comment. Based on suggestions received, minor changes have been made to the language in the ''Categories of Individuals Covered by the System'' and in the ''Retrievability'' sections of the notices on TAX–001 and TAX–002. A minor change has been made to the language in the ''Categories of Records in the System'' section of the notice on TAX–003. In all three system notices, language was changed in the ''Safeguards'' section, to provide more specificity. In the ''Exemptions Claimed for the System'' in TAX–003, reference to 5 U.S.C. 552a (k)(2) was eliminated as a basis for exemptions and exemption from 5 U.S.C. 552a(e)(1) was removed.

In accordance with 5 U.S.C. 552a, the DOJ has provided a report to the OMB and the Congress on the modifications to the notices for Justice/TAX–001, TAX–002, and TAX–003 systems of records, and the Final Rule.

Dated: February 27, 2006.

Paul R. Corts,

Assistant Attorney General for Administration.

Department of Justice
Tax Division
JUSTICE/TAX–001

SYSTEM NAME:

Criminal Tax Case Files, Special Project Files, Docket Cards, and Associated Records.

SECURITY CLASSIFICATION:

Not classified.

SYSTEM LOCATION:

U.S. Department of Justice, Tax Division, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons referred to in potential or actual criminal tax cases or investigations and related matters of concern to the Tax Division under the Internal Revenue laws and related statutes. Since some information about the progress of employees working on the case is retrieved for management purposes, they are also covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index, by individual name, of all criminal tax cases and related matters assigned, referred, or of interest to the Tax Division. The records in this system include case files, court records, tax returns, tax return information and documents which contain tax return information, inter-agency correspondence, intra-agency memoranda, indictments, information, search warrants, search warrant affidavits, wiretap authorizations, immunity requests, grand jury information, criminal enforcement and civil investigatory information and reports, docket cards, and associated records. For pre-1977 cases or related matters, summary information—names of principals or related parties, case file or management numbers, case type, case weight, attorney assigned, court numbers, defense counsel and associated information—is maintained on docket cards. For cases 1977 onwards, information is maintained in an automated case management system. This automated system also permits Tax Division personnel to record information about the case on a comment field. A timekeeping function for attorneys, paralegals, and other Division employees involved in litigation is also part of the automated case management system. Records are maintained for the purpose of prosecuting (including investigations leading to prosecutions) or otherwise resolving criminal cases or matters under the jurisdiction of the Tax Division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 5 U.S.C. 301, 44 U.S.C. 3101, and 28 CFR 0.70 and 0.71.

PURPOSES:

Information is maintained in docket cards and in electronic format on each Tax Division (Division) criminal case and related matter to identify and assign mail to the proper office within the Division and the attorneys therein assigned to the case; to relate incoming material to an existing case; to establish a file and case management numbers; and to provide a central index of cases within the Division and to facilitate the flow of legal work in the Division. The Division's automated case management system enhances these uses and enables data management specialists, managers, and Division personnel to locate information about the status of pending or terminated criminal matters and litigation; to identify assigned staff; to track the status of litigation; to prepare reports including budget requests; and to track the number of hours Division personnel worked on various matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Tax returns and return information may be disclosed only as provided in 26 U.S.C. 6103. Grand jury information may be disclosed only as provided by Rule 6(e) of the Federal Rules of Criminal Procedure.

Other records relating to a case or matter maintained in this system of records may be disseminated as a routine use, as follows:

(1) Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, state, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(2) In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or

adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(3) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(4) To appropriate officials and employees of a Federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(5) To Federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(6) To the National Archives and Records Administration (NARA) for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(7) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(8) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(9) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(10) The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(11) Information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans.

(12) In the course of investigating the potential or actual violation of any law whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

(13) To the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made.

(14) In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse or poor or inadequate quality of care may be disclosed to the affected patient or the patient's representative or guardian at the discretion of and in the manner determined by the agency in possession of the information.

(15) To representatives of the Internal Revenue Service who are conducting tax records safeguard reviews pursuant to 26 U.S.C. 6103(p)(4).

(16) To the United States Department of State, to the extent necessary to assist in apprehending and/or returning a fugitive to a jurisdiction which seeks the fugitive's return.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Only as stated in the above routine uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Unless otherwise noted herein, all information is recorded on paper material and on docket cards. Paper materials are stored within file jackets and metal file cabinets; docket cards, within boxes or card drawers. Summary information, as described above, is maintained in electronic format and stored on data processing-type storage medium or on magnetic tape.

RETRIEVABILITY:

Information is retrieved primarily by name of person, case or file numbers, employee name, employee number, or court district.

SAFEGUARDS:

Information is safeguarded in accordance with 26 U.S.C. 6103(p) and the Tax Division is subject to periodic inspections by the Internal Revenue Service to ensure that adequate safeguards which satisfy the requirements of that section are in place. Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties. Buildings in which the records are located are under security guard, and access to premises is by official identification. The various sections in the Division have locked entry doors which may only be entered with an encrypted card key. Records are stored in spaces and filing cabinets which are locked outside normal business hours. Training is provided for new Division personnel regarding the need for confidentiality of records, particularly tax returns and return information. A password is required to access the automated case management system and passwords are changed every 90 days.

RETENTION AND DISPOSAL:

Tax records not retained are returned to the Internal Revenue Service. Records

in closed files are sent to the Federal Records Center where they are destroyed after fifteen (15) years unless they are determined to have historical significance under the NARA criteria. Records having historical significance are retained permanently. Summary information in electronic format is retained permanently. Closed records designated permanent are retired at the Records Center, where they will remain until the statutory access restrictions of 26 U.S.C. 6103 are resolved.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Tax Division; U.S. Department of Justice; 950 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

An inquiry concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Major portions of this system are exempt from disclosure and contest by 5 U.S.C. 552a(j)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the applicability of an exemption as to a specific record must be made at the time a request for access is received. A request for access to a record contained in this system must be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' Include in the request the System name, the name of the individual involved, the individual's birth date and place, or any other identifying number which may be of assistance in locating the record, the name of the case or matter involved, if known, the name of the judicial district involved, if known, and any other information which may be of assistance in locating the record. You will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above. You must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury and dated as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system.

CONTESTING RECORD PROCEDURES:

A major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2). Title 28 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Internal Revenue Service, Department offices and employees, and other Federal, state, local, and foreign law enforcement and non-law enforcement agencies, private persons, witnesses, and informants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsection (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register** and are codified at 28 CFR 16.93(a) and (b).

Department of Justice

Tax Division

JUSTICE/TAX–002

SYSTEM NAME:

Tax Division Civil Tax Case Files, Docket Cards, and Associated Records.

SECURITY CLASSIFICATION:

Not classified.

SYSTEM LOCATION:

U.S. Department of Justice; Tax Division; 950 Pennsylvania Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons referred to in potential or actual civil tax cases and related matters under the jurisdiction or of concern to the Tax Division under Internal Revenue laws and related statutes. Since some information about the progress of employees working on the case is retrieved for management purposes, they are also covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system pertain to a broad variety of litigation under the jurisdiction of the Tax Division. They include case files which were created or received by the Tax Division in connection with a particular case. These case files contain all pleadings, motions, briefs, transcripts and exhibits, all other papers filed with a court or issued by the Court, correspondence relating to the case, tax returns, tax return information, and documents which contain tax return information, inter-agency memoranda, intra-agency memoranda, assignment sheets, investigative reports and associated records. For pre-1977 cases, summary information is maintained on docket cards on which is recorded the names of principals or related parties, case file or management numbers, case type, case weight, attorney assigned, court numbers, opposing counsel and associated information. For cases beginning in 1977, information is maintained in an automated case management system. This automated system also permits Tax Division personnel to record information about the case on a comment field. Also part of the automated case management system is a timekeeping function for attorneys, paralegals, and other Tax Division employees involved in litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 5 U.S.C. 301, 44 U.S.C. 3101, and 28 CFR 0.70 and 0.71.

PURPOSES:

Information is maintained in docket cards and in electronic format on each Tax Division (Division) civil case: (a) To identify and assign mail to the proper office within the Division and the attorneys therein assigned to the case; (b) to relate incoming material to an existing case; (c) to establish a file and case management numbers; and (d) to provide a central index of cases within the Division and to facilitate the flow of legal work in the Division. The Division's automated case management system enhances these uses and enables data management specialists, managers, and Division personnel: (a) To locate information about the status of pending or terminated civil matters and litigation; (b) to identify assigned staff; (c) to track the status of litigation; (d) to prepare reports including budget requests; and (e) to track the number of hours Division personnel worked on various matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Tax returns and return information may be disclosed only as provided in 26 U.S.C. 6103.

Other records related to a case or matter maintained in this system of records may be disseminated as follows:

(1) Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the

relevant records may be referred to the appropriate Federal, state, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(2) In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(3) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement or in informal discovery proceedings.

(4) To appropriate officials and employees of a Federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(5) To Federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(6) To the National Archives and Records Administration (NARA) for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(7) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(8) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(9) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(10) The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(11) Information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans.

(12) In the course of investigating the potential or actual violation of any law whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, state, local or foreign agency, or to an individual or organization if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

(13) A record relating to a case or matter that has been referred to the Tax Division may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made.

(14) In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any Federal, state, local, tribal, foreign, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse or poor or inadequate quality of care may be disclosed to the affected patient or the patient's representative or guardian at the discretion of and in the manner determined by the agency in possession of the information.

(15) To representatives of the Internal Revenue Service (IRS) who are conducting tax records safeguard reviews pursuant to 26 U.S.C. 6103(p)(4).

(16) To the United States Department of State, to the extent necessary to assist in apprehending and/or returning a fugitive to a jurisdiction which seeks the fugitive's return.

(17) In the case of records relating to an individual who owes an overdue debt to the United States to: (a) A Federal agency which employs the individual to enable the employing agency to offset the individual's salary; (b) a Federal, state, local or foreign agency, an organization, including a consumer reporting agency, or individual to elicit information to assist the Division in the collection of the overdue debt; (c) a collection agency or private counsel to enable them to collect the overdue debt; and/or (d) the IRS to enable that agency to offset the individual's tax refund.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Only as stated in above routine uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Unless otherwise noted herein, all information is recorded on paper material. Paper materials are stored within file jackets and metal file cabinets; docket cards, within boxes or card drawers. Summary information, as described above, is maintained in electronic format and stored on data processing-type storage medium or on magnetic tape and docket cards.

RETRIEVABILITY:

Information is retrieved primarily by name of person, case or file numbers, employee name, employee number, or court district.

SAFEGUARDS:

Information is safeguarded in accordance with 26 U.S.C. 6103(p) and the Tax Division is subject to periodic inspections by the IRS to ensure that adequate safeguards which satisfy the

requirements of that section are in place. Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties. Buildings in which the records are located are under security guard, and access to premises is by official identification. The various sections in the Division have locked entry doors which may only be entered with an encrypted card key. Records are stored in spaces and filing cabinets which are locked outside normal business hours. Training is provided for new Division personnel regarding the need for confidentiality of records, particularly tax returns and return information. A password is required to access the automated case management system and passwords are changed every 90 days.

RETENTION AND DISPOSAL:

Tax records not retained are sent to the Internal Revenue Service. Records in closed files are sent to the Federal Records Center where they are destroyed after fifteen (15) years unless they are determined to have historical significance under the NARA criteria. Records of historical significance are retained permanently. Summary information in electronic format is retained permanently. Closed records designated permanent are retired at the Records Center, where they will remain until the statutory access restrictions of 26 U.S.C. 6103 are resolved.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Tax Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

An inquiry concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the applicability of an exemption to a specific record must be made at the time a request for access is received. A request for access to a record contained in this system must be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request'. Include in the request the System name, the name of the individual involved, the individual's birth date and place, or any other identifying number which may be of assistance in locating the record, the name of the case or matter involved, if known, the name of the judicial district involved, if known, and any other information which may be of assistance in locating the record. You will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above. You must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury and dated as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system.

CONTESTING RECORD PROCEDURES:

A major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(k)(2). Title 28 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Internal Revenue Service, Department offices and employees, and other Federal, state, local, and foreign law enforcement and non-law enforcement agencies, private persons, witnesses, and informants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3), (d)(1), (d)(2), (d)(3), and (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register** and codified at 28 CFR 16.93 (c) and (d).

Department of Justice

Tax Division
JUSTICE/TAX–003

SECURITY CLASSIFICATION:

Not classified.

SYSTEM NAME:

Files of Applications for Attorney and Non-Attorney Positions with the Tax Division.

SYSTEM LOCATION:

U.S. Department of Justice; Tax Division; 950 Pennsylvania Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants who have applied for a position as an attorney or for non-attorney positions with the Tax Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system include resumes, employment applications, referral correspondence, grade transcripts, letters of recommendation, interview notes, internal notes, memoranda and evaluations, information received from references and individuals contacted in connection with the application, and related personnel forms and correspondence. Some information is maintained in electronic format. Summary information (names of applicants, social security numbers, dates documents received, type of documents received, where interviewed, personal data, dispositions, and type of response sent) is maintained in an electronic database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 5 U.S.C. 301, 44 U.S.C. 3101, and 28 CFR 0.70 and 0.71.

PURPOSE:

This system is used by employees and officials of the Division and the Justice Department in making employment decisions including making information known to references supplied by applicant and other persons contacted to verify information supplied or to obtain additional information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records related to a case or matter maintained in this system of records may be disseminated as follows:

(1) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(2) To the National Archives and Records Administration (NARA) for

purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(3) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(4) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(5) Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, state, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(6) To Federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(7) In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(8) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(9) The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(10) Information may be disclosed to the Office of Personnel Management which conducts audits of these records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Unless otherwise noted herein, all information is recorded on paper material. Paper materials are stored within file jackets and metal file cabinets. Summary information, as described above, is maintained in electronic format and stored on data processing-type storage medium or on magnetic tape.

RETRIEVABILITY:

Information is retrieved by using the name of the applicant.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the Department's automated systems security and access policies. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties. Buildings in which the records are located are under security guard, and access to premises is by official identification. The Personnel Office in the Division is in a space which has locked key entry doors which may only be entered with an encrypted card key. A password is required to access an electronic database and passwords are changed every 90 days.

RETENTION AND DISPOSAL:

Information in the applicant files is retained until after a decision is made as to the employment of the applicant, usually for one year and, for some files, up to two years after the decision.

Summary information in electronic format is retained permanently. Closed records designated permanent are retired at the Records Center, where they will remain until the statutory access restrictions of 26 U.S.C. 6103 are resolved.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Tax Division; U.S. Department of Justice; 950 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

An inquiry concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

A request for access to a record contained in this system must be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request'. Include in the request the name of the individual involved, the individual's birth date and place, or any other identifying number which may be of assistance in locating the record, as well as the position applied for. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above. Some information may be exempt from access provisions as described in the section entitled ''Exemptions Claimed for the System.'' A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely which information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from contesting records, records procedures, or both, as described in the section entitled ''Exemptions Claimed for the System.'' A determination whether a record, a record procedure(s), or both, may be contested will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Generally, sources of information contained in the system are the individual applicants, persons referring or recommending the applicant, and employees and officials of the Division and the Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General is exempting this system from 5 U.S.C. 552a subsections (c)(3) and (d)(1), pursuant to 5 U.S.C. 552a(k)(5). The final rule claiming these exemptions is published in today's **Federal Register**.

[FR Doc. E6–3149 Filed 3–6–06; 8:45 am]

BILLING CODE 4410–16–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Controlnet International, LTD

Notice is hereby given that, on February 10, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ''the Act''), ControlNet International, Ltd. (''ControlNet'') has failed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, Woodhead Software & Electronics, Waterloo, Ontario, Canada has been added as a party to this venture. Also, Fujikura, Ltd., Tokyo, Japan has withdrawn as a party to this venture.

No other changes have been made in either the membership in this group research project remains open, and ControlNet intends to file additional written notification disclosing all changes in membership.

On February 3, 2005, ControlNet 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 March 1, 2005 (70 FR 9979).

The last notification was filed with the Department on September 1, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 23, 2005 (70 FR 55920).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–2133 Filed 3–6–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open DeviceNet Vendor Association, Inc.

Notice is hereby given that, on February 10, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open DeviceNet Vendor Association, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, Switchgear & Instrumentation, Ltd., Bradford, United Kingdom; Kawasaki Heavy Industries, Ltd., Hyogo, Japan; Flowserve Corporation, Lynchburg, VA; Weidmueller Interface GmbH & Co. KG, Detmold, Germany; ELAU AG, Marktheidenfeld, Germany; JVL Industri Elektronik A/S, Birkerod, Denmark; OPTO–22, Tennecula, CA; Smart Network Devices GmbH, Juelich, Germany; ELETTRO STEMI S.R.L., Altavilla Vicentina, Italy; and Control Technology Corporation, Hopkinton, MA have been added as parties to this venture.

Also, HaePyung Electronics Research Institute, Kumi-City, Republic of Korea; Crouzet Automatismes SA, Bourguebus, France; Turbotek, Kyunggi-do, Republic of Korea; Fairchild Industrial Products Company, Winston-Salem, NC; Draka USA, Franklin, MA; KDT Systems Co., Ltd., Yongin-City, Republic of Korea; PDL Electronics Ltd., Napier, New Zealand; and Dressler HF—Technik GmbH, Stolberg, Germany have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notification disclosing all changes in membership.

On June 21, 1995, ODVA 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 February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on September 1, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 23, 2005 (70 FR 55921).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–2132 Filed 3–06–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR–31).

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 178, page 54569 on September 15, 2005, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 6, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: EOIR–31. Executive Office for Immigration Review, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Non-profit organizations seeking to be recognized as legal service providers by the Board of Immigration Appeals (Board) of the Executive Office for Immigration Review (EOIR). *Other:* None. Abstract: This information collection is necessary to determine whether the organization meets the regulatory and relevant case law requirements for recognition by the Board as a legal service provider, which then would allow its designated representative or representatives to seek full or partial accreditation to practice before EOIR and/or the Department of Homeland Security.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 110 respondents will complete the form annually with an average of 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 220 total burden hours associated with this collection annually.

If additional information is required, contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530, or by fax at (202) 514–1590.

Dated: March 1, 2006.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–3144 Filed 3–6–06; 8:45 am]

BILLING CODE 4410–30–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 6, 13, 20, 27, April 3, 10, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of March 6, 2006

There are no meetings scheduled for the Week of March 6, 2006.

Week of March 13, 2006—Tentative

Monday, March 13, 2006

1:30 p.m. Briefing on Office of Information Services (OIS) Programs, Performance, and Plans (Public Meeting), (Contact: Edward Baker, 301–415–8700)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

Wednesday, March 15, 2006

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting), (Contact: Evelyn S. Williams, 301–415–7011)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Discussion on Security Issues (Closed—Ex. 1 & 3)

Thursday, March 16, 2006

9:30 a.m. Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Cynthia Carpenter, 301–415–1275)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

Week of March 20, 2006—Tentative

There are no meetings scheduled for the Week of March 20, 2006.

Week of March 27, 2006—Tentative

There are no meetings scheduled for the Week of March 27, 2006.

Week of April 3, 2006—Tentative

There are no meetings scheduled for the Week of April 3, 2006.

Week of April 10, 2006—Tentative

There are no meetings scheduled for the Week of April 10, 2006.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 2, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–2190 Filed 3–3–06; 2:11 pm]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Facility Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission tour; correction.

SUMMARY: The dates identified for a Commission tour (previously noticed at 71 FR 10727) were in error. Instead of March 5–7, 2006, the tour will occur March 6–8, 2006.

DATES: March 6, 7 and 8, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

Steven W. Williams,

Secretary.

[FR Doc. 06–2137 Filed 3–6–06; 8:45 am]

BILLING CODE 7710–FW–M

POSTAL RATE COMMISSION

[Docket No. N2006–1; Order No. 1454]

Postal Service Network Realignment

AGENCY: Postal Rate Commission.

ACTION: Order.

SUMMARY: This document announces the appointment of an officer to represent the interests of the general public in a pending case. This appointment fulfills a statutory requirement.

ADDRESSES: Submit documents electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

Postal Service Network Realignment Order, 71 FR 9613 (February 24, 2006).

In initiating this proceeding in Order No. 1453, the Commission stated that it would issue a subsequent order designating an individual to fulfill the requirement of section 3661(c) of title 39 that an ''officer of the Commission who shall be required to represent the interests of the general public'' participate in this case.[1]

The Commission hereby designates Ms. April Boston, who currently serves as Special Assistant to Commissioner Tony Hammond, to represent the interests of the general public in this proceeding. The Office of the Consumer Advocate is directed to provide litigation and staff support to Ms. Boston in fulfilling her duties under this order. Pursuant to this designation, Ms. Boston will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record.

Neither Ms. Boston nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. Additionally, Ms. Boston will not advise the Commission in other matters currently pending, or in any proceedings that may be subsequently initiated, for the duration of this assignment.

Ordering Paragraphs

It is ordered:

1. April Boston, Special Assistant to Commissioner Tony Hammond, is designated to represent the interests of the general public in this proceeding.

2. The Office of the Consumer Advocate is directed to provide litigation and staff support to Ms. Boston in fulfilling her duties under this order.

3. The Secretary shall cause this order to be published in the **Federal Register**.

Issued: March 1, 2006.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E6–3184 Filed 3–6–06; 8:45 am]

BILLING CODE 7710–FW–P

[1] Order No. 1453, February 17, 2006, at 3.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 2a–7; SEC File No. 270–258; OMB Control No. 3235–0268.

Notice is hereby given that under the Paperwork Reduction Act of 1995 (''PRA'') [44 U.S.C. 3501], the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Rule 2a–7 [17 CFR 270.2a–7] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Act'') governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act and, subject to certain risk-limiting conditions, permits money market funds to use the ''amortized cost method'' of asset valuation or the ''penny-rounding method'' of share pricing.

Rule 2a–7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value (''NAV''). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities and asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–SAR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that each of 847 [1] money market funds spends a total of approximately 1220 hours [2] of professional time (at $76 per hour) [3] to record credit risk analyses and determinations regarding adjustable rate securities, asset backed securities and securities subject to a demand feature or guarantee, for a total of approximately

[1] These include registered money market funds and series of registered funds. This estimate is based on information from Lipper Inc.'s Lana database as of September 30, 2005.

[2] This average is based on discussions with individuals at money market funds and their advisers. The actual number of burden hours may vary significantly depending on the type and number of portfolio securities held by individual funds.

[3] The estimated hourly cost of professional time was based on the weighted average annual salaries reported for senior business analysts, floor managers and portfolio managers in New York City in Securities Industry Association, *Management and Professional Earnings in the Securities Industry* (2003) and Securities Industry Association, *Office Salaries in the Securities Industry* (2003) (collectively, the ''SIA Salary Guides'').

$79 million. The staff further estimates that each of 24 new money market funds spends a total of 21 hours of director, legal, and support staff time at a total cost of approximately $126,216 to adopt procedures designed to stabilize the fund's NAV and guidelines regarding the delegation of certain responsibilities to the fund's adviser.[4] The staff further estimates that on average each of 212 money market funds spends a total of 4.5 hours of director and legal time at a total cost of approximately $916,370 to review and amend written procedures and guidelines each year.[5] Finally, the staff estimates that one money market fund that experiences a change in certain eligibility standards for portfolio securities or an event of default or insolvency relating to portfolio securities spends a total of one and a half hours of professional legal time (at $109.97 per hour) documenting board determinations and notifying the Commission regarding the event, for a total of $165. Thus, the Commission estimates the total annual burden of the rule's information collection requirements are 1,034,800 hours at an annual cost of $80 million.[6]

Based on these estimates, Commission staff estimates the total burden of the rule's paperwork requirements for money market funds to be 1,034,800 hours.[7] This is an increase from the previous estimate of 480,830 hours. The increase is attributable to updated information from money market funds regarding hourly burdens and the significant differences in burden hours reported by the funds selected at random to be surveyed in different submission years.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[8] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $300,000. Based on a cost of $0.0000204 per dollar of assets under management for small fund, $0.0000005 per dollar assets under management for medium funds, and $0.0000046 per dollar of assets under management for large funds,[9] the staff estimates compliance with rule 2a–7 costs the fund industry approximately $7.6 million per year.[10] Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000231 per dollar of assets under management for large funds, the staff estimates that total annualized capital/startup costs range from $0 for small funds to $37.5 million for all large funds. Commission staff further estimates that, even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($19 million) and for record preservation ($3.8 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. 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 control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

February 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3160 Filed 3–6–06; 8:45 am]

BILLING CODE 8010–01–P

[4] This estimate is based on information from iMoneyNet's database. During the past three years, an average of 24 new money market funds have been created annually. In calculating industry costs for complying with the information collection requirements of rule 2a–7, the Commission staff estimate that fund boards' hourly rate is $2000 per hour. The estimated costs for professional and support staff time were based on the average annual salaries reported in the SIA Salary Guides. The estimated costs for legal time was based on the weighted average of associate general counsel salaries reported in the SIA Salary Guides and New York law firm attorney salaries (outside counsel) based on a survey conducted by the National Law Journal available at *http://www.law.com/special/professionals/nlj/2002/firm_by_firm_sampling_of_billing_rates_nationwide.shtml*.

[5] For PRA purposes we assumed that on average 25% of money market funds would review and update their procedures on an annual basis.

[6] A significant portion of the recordkeeping burden involves organizing information that the funds already collect when initially purchasing securities. In addition, when a money market fund analyzes a security, the analysis need not be presented in any particular format. Money market funds therefore have a choice of methods for maintaining these records that vary in technical sophistication and formality (*e.g.*, handwritten notes, computer disks, etc.). Accordingly, the cost of preparing these documents may vary significantly among individual funds. The burden hours associated with filing reports to the Commission as an exhibit to Form N–SAR are included in the PRA burden estimate for that form.

[7] This estimate is based on the following calculation: (847 × 1220) + (1 × 1.5) + (24 × 21) + (212 × 4.5) = 1,034,800.

[8] The amount of assets under management in individual money market funds ranges from approximately $400,000 to $109 billion.

[9] For purpose of this PRA submission, Commission staff used the following categories for fund sizes: (i) small—money market funds with $50 million or less in assets under management, (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large—money market funds with more than $1 billion in assets under management.

[10] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $2.2 billion under management in small funds, $174.1 billion under management in medium funds and $1623.8 billion under management in large funds, the costs of preservation were estimated as follows: (0.0000204 × $2.2 billion) + (0.0000005 × $174.1) + (0.0000046 × $1623.8 billion) = $7.6 million. See supra note 9 regarding sizes of large, medium, and small funds.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form TH; OMB Control No. 3235–0425; SEC File No. 270–377.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

Form TH under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939 and the Investment Company Act of 1940 is used by registrants to notify the Commission that an electronic filer is relying on the temporary hardship exemption for the filing of a document in paper format that would otherwise be required to be filed electronically as prescribed by Rule 201(a) of Regulation S–T. Form TH is a public document and is filed on occasion. Form TH must be filed every time an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of a required electronic filing. Approximately 70 registrants file Form TH and it takes an estimated .33 hours per response for a total annual burden of 23 hours.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3161 Filed 3–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53390; File No. SR–ISE–2006–08]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Establishing Fees for Historical Options Tick Market Data for Non-Members

February 28, 2006.

On February 1, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Schedule of Fees to establish non-member fees for historical options tick market data, described below. The ISE requested the Commission grant accelerated approval of the proposed rule change. The Commission did not immediately grant accelerated approval. Instead, the proposed rule change was published for comment in the **Federal Register** on February 9, 2006 for a 15-day comment period, which expired on February 24, 2006.[3] The Commission received no comments on the proposal.

Historical options tick market data is Options Price Reporting Authority (''OPRA'') tick data, a complete file, tick-by-tick, of all quote and transaction data of all instruments disseminated by OPRA during a trading day. OPRA tick data includes data from all six options exchanges. On any given trading day, OPRA tick data is publicly available and may be stored. The OPRA tick data collected and stored by ISE is neither exclusive nor proprietary to the Exchange. The ISE captures the OPRA tick data and will make it available as an ''end of day'' file[4] or as a ''historical'' file[5] for ISE members and non-ISE members alike.[6]

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirement of Section 6(b)(4)[8] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission finds good cause for approving this proposed rule change before the 30th day after publication of notice in the **Federal Register**. On February 1, 2006, the ISE amended its rules to give its members the opportunity to access historical options tick market data.[9] The ISE asked the Commission to approve the instant proposed rule change on an accelerated basis so that the ISE could offer the same service to non-members (at the same price) as soon as possible. As mentioned above, the Commission received no comments on the ISE's proposed rule change. The Commission believes that the proposed rule change raises no new issues or novel regulatory questions, and that non-members should have the ability to partake of this service without unnecessary delay. Accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change be, and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3162 Filed 3–6–06; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53211 (February 2, 2006), 71 FR 6801. The instant proposed rule change proposes to establish a fee for non-ISE members only. The Exchange also filed a separate proposed rule change, SR–ISE–2006–07, Securities Exchange Act Release No. 53212 (February 2, 2006), 71 FR 6803 (February 9, 2006), that established fees for ISE members. The proposed fees for both ISE members and non-ISE members are the same.

[4] An end of day file refers to OPRA tick data for a trading day that is distributed prior to the opening of the next trading day. An end of day file will be made available to subscribers as soon as practicable at the end of each trading day on an on-going basis pursuant to an annual subscription or through an ad-hoc request.

[5] An end of day file that is distributed after the start of the next trading day is called a historical file. A historical file will be available to customers for a pre-determined date range by ad-hoc requests only.

[6] *See supra*, at n.3.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

[9] *See supra*, at n.3.

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53388; File No. SR–Phlx–2006–13]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Option Position Limits

February 28, 2006.

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 February 28, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for a period of approximately six months, through September 1, 2006, a pilot program applicable to Exchange Rule 1001, Position Limits, which increases the standard position and exercise limits for equity option contracts and options on the Nasdaq-100 Index Tracking Stock[5] (''QQQQ'') (''Pilot Program''). The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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 purpose of the proposed rule change is to extend the Pilot Program, which is scheduled to expire March 3, 2006,[6] for approximately an additional six-month period, through September 1, 2006.

Position limits impose a ceiling on the number of option contracts in each class on the same side of the market relating to the same underlying security that can be held or written by an investor or group of investors acting in concert. Exchange Rule 1002 (not proposed to be amended herein) establishes corresponding exercise limits. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

Exchange Rule 1001 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Exchange Rule 1002 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.[7]

Standard Position and Exercise Limit

The Pilot Program increases the standard position and exercise limits for equity options traded on the Exchange and for options overlying QQQQ to the following levels:

Standard equity option contract limit[8]	Pilot program equity option contract limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Standard QQQQ option contract limit	**Pilot program QQQQ option contract limit**
300,000	900,000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement (''License'') with Nasdaq. The Nasdaq-100 Index® (''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[6] *See* Securities Exchange Act Release No. 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005) (notice of filing and immediate effectiveness of File No. SR–Phlx–2005–17). *See also* Securities Exchange Act Release No. 52261 (August 15, 2005), 70 FR 49004 (August 22, 2005) (notice of filing and immediate effectiveness of File No. SR–Phlx–2005–51, which extended the Pilot Program).

[7] Exchange Rule 1002 states, in relevant part, ''* * * no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange (or, respecting an option not dealt in on the Exchange, another exchange if the member or member organization is not a member of that exchange) if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Rule 1001, in the case of options on a stock or on an Exchange-Traded Fund Share.* * *''

[8] Except when the Pilot Program is in effect.

To date the Exchange believes that there have been no adverse effects on the market as a result of these increases in the limits for equity option contracts and options overlying QQQQ.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objective of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and the national market system, and, in general to protect investors and the public interest, by extending the Pilot Program for approximately an additional six months.

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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2006–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2006–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2006–13 and should be submitted on or before March 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3163 Filed 3–6–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19–4(f)(6)(iii).

[14] *Id.*

[15] For the purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council Public Meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss MTS needs, regional MTS outreach and education initiatives, and other issues. A public comment period is scheduled for 8:30 a.m. to 9 a.m. on Friday, March 24, 2006. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by March 16, 2006. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by March 31, 2006.

DATES: The meeting will be held on Thursday, March 23, 2006, from 1 p.m. to 5 p.m. and Friday, March 24, 2006, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the Windsor Court Hotel, 300 Gravier Street, New Orleans, LA 70130. The hotel's phone number is 888–596–0955.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–4357;

Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; *richard.lolich@dot.gov.*

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

Dated: March 1, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–3151 Filed 3–6–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Analysis by the President's Working Group on Financial Markets on the Long-Term Availability and Affordability of Insurance for Terrorism Risk

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice; request for comments.

SUMMARY: The Terrorism Risk Insurance Extension Act of 2005 requires the President's Working Group on Financial Markets to perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk, including group life coverage and coverage for chemical, nuclear, biological, and radiological events.

As chair of the President's Working Group, Treasury is issuing this notice seeking public comment to assist the President's Working Group in its analysis.

DATES: Comments must be in writing and received by April 21, 2006.

ADDRESSES: Please submit comments (if hard copy, preferably an original and two copies) to Treasury's Office of Financial Institutions Policy, Attention: President's Working Group on Financial Markets Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Because postal mail may be subject to processing delay, we recommend that comments be submitted by electronic mail to: *PWGComments@do.treas.gov.* All comments should be captioned with ''President's Working Group on Financial Markets: Terrorism Risk Insurance Analysis.'' Please include your name, affiliation, address, e-mail address and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary (no more than five single-spaced pages). All comments received will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, please call one of the numbers below.

FOR FURTHER INFORMATION CONTACT: C. Christopher Ledoux, Senior Policy Analyst, Office of Financial Institutions Policy, 202–622–6813; or Mario Ugoletti, Director, Office of Financial Institutions Policy, 202–622–2730 (not toll free numbers).

SUPPLEMENTARY INFORMATION: On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322) (hereinafter referenced as ''TRIA''). TRIA's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections. Title I of TRIA established a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, as defined in the Act. TRIA authorized Treasury to administer and implement the Terrorism Risk Insurance Program (Program), including the issuance of regulations and procedures. As originally enacted, the Program was to end on December 31, 2005.

Congress subsequently approved and on December 22, 2005, the President signed into law the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144, 119 Stat. 2660) (the Extension Act). The Extension Act continued the Program for two years until December 31, 2007, revised several structural aspects of the Program, and required an analysis of the availability and affordability of terrorism risk insurance. Specifically, the Extension Act amended section 108 of TRIA to require the President's Working Group on Financial Markets,[1] in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, to perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk, including group life coverage and coverage for chemical, nuclear, biological, and radiological events. This Notice seeks comment from these and any other interested parties as a means of satisfying the consultation requirement in the most open and efficient manner. TRIA, as amended by the Extension Act, requires the President's Working Group on Financial Markets to submit a report to Congress on its findings no later than September 30, 2006.

Treasury, on behalf of the President's Working Group, is soliciting comments, including empirical data and other information in support of such comments, where appropriate and available, regarding the long-term availability and affordability of insurance for terrorism risk, including terrorism risk insurance coverage for group life and for chemical, nuclear, biological, and radiological events. We request that submitters distinguish between risk from foreign and domestic terrorism in their comments. In addition, we seek and solicit comment in response to the following specific questions:

I. Long-Term Availability and Affordability of Terrorism Risk Insurance

1.1 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage? How can these factors be measured and projected?

1.2 What improvements have taken place in the ability of insurers to measure and manage their accumulation of terrorism risk exposures? How will this evolve in the long-term?

1.3 What improvements have taken place in the ability of insurers to price terrorism risk insurance, including in the development and use of modeling? How will this evolve in the long-term?

1.4 How, if at all, were primary insurers' pricing decisions affected by the anticipated expiration of TRIA at the end of 2005, particularly for insurance policies extending into 2006 that cover terrorism risk? What role did the pricing and availability of reinsurance play in those decisions?

1.5 What role do mitigation efforts related to terrorism risk play in an insurer's underwriting and pricing decisions? How will this evolve in the long-term?

1.6 What is the current availability of reinsurance to cover terrorism risk? Please distinguish by line or type of insurance being reinsured and on what basis (treaty or facultative). How will this evolve in the long-term?

1.7 At what policyholder retention levels are insurance programs being structured to cover terrorism risk; and, with regard to insurers, how are

[1] The President's Working Group on Financial Markets (established by Executive Order 12631) is comprised of the Secretary of the Treasury (who serves as its Chairman), the Chairman of the Federal Reserve Board, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission.

reinsurance programs likewise being structured? Please comment on the availability and affordability at each level.

1.8 In the long-term, what are the key factors that will determine the amount of private-market insurer and reinsurer capacity available for terrorism risk insurance coverage? How will this evolve in the long-term? Please comment on potential entry of new capital into insurance markets.

1.9 To what extent have alternate risk transfer methods (*e.g.*, catastrophe bonds or other capital market instruments) been used for terrorism risk insurance, and what is the potential for the long-term development of these products?

1.10 To what extent have captive insurance companies been used for terrorism risk insurance, and what is the potential for the use of captive insurers to insure against such risk long-term?

1.11 Have state approaches made coverage more or less available and affordable, such as through permitted exclusions and rate regulation? To what extent will the long-term availability and affordability of terrorism risk insurance be influenced by state insurance regulation? Please comment on state approaches to ensure the continued availability and affordability of terrorism risk insurance in the absence of the TRIA Program being in-place (include state approaches after September 11, 2001 and before TRIA became law on November 24, 2002, as well as state approaches in preparation for the expiration of the TRIA Program).

1.12 What are the differences in availability and affordability of terrorism risk insurance between the licensed/admitted market and the non-admitted/surplus lines market, and, if so, to what degree are those changes attributable to the degree and manner in which each market is regulated?

1.13 What are the differences in availability and affordability of terrorism risk insurance coverage for losses at U.S. locations as compared to such coverage for losses at non-US locations?

II. Long-Term Availability and Affordability of Group Life Insurance Coverage

2.1 What impact, if any, does terrorism risk have on the availability and affordability of group life insurance coverage to the policy holder (*e.g.*, employer) and certificate holders (*e.g.*, employees)? How will this evolve in the long-term?

2.2 To what extent is an insurer's decision to issue group life coverage influenced by aggregation or accumulation risk in certain locations? What steps have group life insurance providers taken or do they plan to take to offset any aggregation or accumulation risk?

2.3 Has terrorism risk made group life coverage less affordable to the policy or certificate holder? Have group life insurance rates increased or decreased as compared to rates before and since September 11, 2001?

2.4 Please explain how group life insurance coverage may be bundled with other coverages and benefits provided through an employee-benefits program, and how group life coverage is priced, either separately or collectively, through such programs. Please describe any effects competition has on such pricing.

2.5 Are group life providers voluntarily providing coverage for loss of life arising out of or resulting from acts of terrorism, or is coverage mandated by any state or federal laws? Are group life providers prohibited by law from excluding terrorism risk from group life insurance policies?

2.6 Has terrorism risk affected segments of the group life market differently, such as in the case of small/medium sized employers, and if so, why?

2.7 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage for group life insurance?

III. Long-Term Availability and Affordability of Insurance Coverage for Chemical, Nuclear, Biological, and Radiological (CNBR) [2] Events Caused by Terrorism

3.1 What is the current availability and affordability of coverage for CNBR events, and for what perils is coverage available, subject to what limits, and under what policy terms and conditions? Is there a difference in the availability and affordability of coverage for CNBR events caused by acts of terrorism?

3.2 What was the general availability of coverage for CNBR events prior to the terrorist attack of September 11, 2001? To what extent, subject to what limits, and for what perils was coverage available? Did it cover acts of terrorism?

3.3 If coverage for CNBR events caused by acts of terrorism is available, please describe generally to what extent (*i.e.*, limits, locations, exclusions, *etc.*) for what kinds of insurance and from what types of insurers (*i.e.*, large/small, admitted/surplus lines, *etc.*). How will this evolve in the long-term?

3.4 To what extent is terrorism risk coverage available and affordable for nuclear facilities and for chemical plants, manufacturers, and industrial chemical users?

3.5 To what extent, both prior to and since September 11, 2001, have various states allowed insurers to exclude coverage for CNBR events? Please comment on requirements for workers' compensation and fire-following coverage.

3.6 It appears that some insurers are unwilling to provide coverage for CNBR events caused by acts of terrorism even with the federal loss sharing provided by the TRIA Program. Why would this be the case given that TRIA limits an insurer's maximum loss exposure?

3.7 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage for CNBR events?

Dated: February 27, 2006.

Emil W. Henry, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. E6–3150 Filed 3–6–06; 8:45 am]

BILLING CODE 4811–37–P

[2] Though CNBR is commonly used to refer collectively to chemical, nuclear, biological, and radiological losses, comments can be narrow in addressing any of the coverages. If the comment makes such a distinction, please make clear which coverage is being addressed.

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Amendment Notice of Meeting (FR Doc. 06–1514 Filed 2–16–06; 8:45 a.m.)

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission meeting scheduled on March 16–17, 2006, at the Holiday Inn National Airport, 2650 Jefferson Davis Highway, Arlington, VA, will begin each day at 8 a.m. instead of 8:30 a.m. to allow more time for Commission discussion.

For additional information, please contact Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004, or by e-mail at *veterans@vetscommission.intranets.com*.

Dated: February 27, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–2109 Filed 3–6–06; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 71, No. 44
Tuesday, March 7, 2006

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.

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

Correction

In notice document 06–1990 beginning on page 10719 in the issue of Thursday, March 2, 2006, make the following corrections:

1. On page 10720, in the first column, under the first **MATTERS TO BE CONSIDERED** heading, in the ninth and tenth lines, ''Memphis District'' should read ''Vicksburg District''.

2. On the same page, in the same column, under the second **MATTERS TO BE CONSIDERED** heading, in the ninth and tenth lines, ''Memphis District'' should read ''New Orleans District''.

[FR Doc. C6–1990 Filed 3–6–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21702; Directorate Identifier 2005–NM–024–AD; Amendment 39–14473; AD 2006–03–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes, A340–200 and –300 Series Airplanes, and A340–541 and –642 Airplanes

Correction

In rule document 06–989 beginning on page 5971 in the issue of Monday, February 6, 2006, make the following correction:

§39.13 [Corrected]

On page 5974, in §39.13, in Table 2, in the first column, under the heading ''If inspection results reveal–''in the last entry, in the last line, ''the left trim tank'' should read ''the right trim tank''.

[FR Doc. C6–989 Filed 3–6–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113365–04 and REG–209619–93]

RIN 1545–BD19 and RIN 1545–AR82

Escrow Accounts, Trusts, and Other Funds Used During Deferred Exchanges of Like-Kind Property

Correction

In proposed rule document 06–1038 beginning on page 6231 in the issue of Tuesday, February 7, 2006, make the following corrections:

§1.468B–6 [Corrected]

1. On page 6237, in §1.468B–6(e), in the table, in the fourth column, the heading ''T's share*'' should read ''T's share* (percent)''.

2. On the same page, in the same section, in the same table, in the fifth column, the heading ''Monthly interest (percent)'' should read ''Monthly interest''.

[FR Doc. C6–1038 Filed 3–6–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
March 7, 2006

Part II

Department of Housing and Urban Development

24 CFR Part 1000
Self-Insurance Plans Under the Indian Housing Block Grant Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4897–P–01; HUD–2006–0004]

RIN 2577–AC58

Self-Insurance Plans Under the Indian Housing Block Grant Program

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish standards for recipients under the Indian Housing Block Grant Program to purchase insurance through nonprofit insurance entities owned and controlled by Indian tribes and tribally designated housing entities.

DATES: *Comment Due Date:* May 8, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at: *http://www.regulations.gov.* Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without change, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies are also available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410; telephone (202) 401–7914 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) provides, pursuant to Congress' constitutional authority over Indian affairs, a comprehensive program of housing assistance to Indian tribes and their tribally designated housing entities. NAHASDA eliminated several separate assistance programs for Indian tribes and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations for the IHBG program are codified at 24 CFR part 1000.

Section 203(c) of NAHASDA requires recipients of IHBG program assistance to ''maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this Act.'' (See 25 U.S.C. 4133(c).) Section 102 of NAHASDA requires each Indian Housing Plan (IHP) to include a certification that ''the recipient will maintain adequate insurance coverage for housing units that are owned and operated with grant amounts provided under this Act, in compliance with such requirements as may be established by the Secretary.''

Current regulatory requirements for housing insurance in the Native American housing program are found at 24 CFR 1000.38, 1000.136, and 1000.138. Section 1000.38 delineates when flood insurance is necessary. Section 1000.136(a) requires the funding recipient under the program to provide casualty insurance against fire, weather, and liability claims for all housing units owned or operated by the recipient. Section 1000.136(b) allows for cases where the recipient does not have to provide insurance. These exceptions apply to non-repayable grants to families for housing under the following conditions: there is no risk of loss or substantial financial exposure to the recipient; or the amount of the assistance is less than $5,000.00. Section 1000.136(c) requires the funding recipient to require that contractors and subcontractors have adequate insurance or indemnification coverage to cover their activities. Section 1000.136(d) clarifies that the insurance requirements of that section are in addition to the flood insurance requirements of section 1000.38.

Section 1000.138 defines what is considered ''adequate insurance.'' Insurance must be purchased from an insurance provider or plan of self-insurance ''in an amount that will protect the financial stability of the recipient's IHBG program.'' Insurance may be purchased from nonprofit entities without regard to competitive selection if the entities are owned and controlled by the recipients under the program and have been approved by HUD.

B. Historical Background

In many areas, commercial insurers have been unwilling to provide property insurance for Indian housing at an affordable rate. Prior to NAHASDA, the annual contributions contract (ACC) required Indian housing assisted under the United States Housing Act of 1937 to have adequate insurance. HUD's practice was to competitively procure a master insurance policy for all public and Indian housing authorities (IHAs). This practice did not prove effective in obtaining adequate housing insurance for public and Indian housing. In 1986, HUD had to reject the only bid submitted for the master policy because it offered no liability insurance, had only limited property coverage, and was exorbitantly expensive.

Because of difficulties of procuring adequate housing insurance, HUD encouraged the National American Indian Housing Council (NAIHC) to form a risk pool composed solely of IHAs to provide the legally-required insurance coverage for HUD-assisted housing on tribal lands. HUD provided federal funds to assist with the creation of this risk pool. AMERIND Risk Management Corporation (AMERIND) was incorporated in 1986 under the laws of the Red Lake Band of Chippewa Indians (Minnesota) as a self-insurance risk pool for IHAs and Indian tribes pursuant to an intergovernmental agreement. HUD approved the self-insurance plan as a means of protecting federally subsidized Indian housing units. AMERIND continues to administer the approved self-insurance plan for properties funded under NAHASDA, pursuant to 24 CFR 1000.138.

Prior to the effective date of NAHASDA, AMERIND operated under HUD's Indian Housing regulations at 24 CFR 950.190, which did not address preemption of state law. After NAHASDA became effective, those Indian Housing regulations were replaced with the current regulations in 24 CFR part 1000. While the regulations in part 1000 generally address required insurance, they do not set specific standards under which IHBG-assisted housing units may be insured by tribally owned insurance entities. This proposed rule is necessary to address a

nationwide lack of available insurance coverage for affordable, IHBG-assisted housing. After receiving feedback from IHBG recipients that standard commercial insurance premiums were either unavailable or prohibitively expensive, the NAIHC conducted a voluntary survey to assess the depth of the problem across the country. The survey showed a clear need for affordable insurance coverage for IHBG-assisted units. The survey also demonstrated that IHBG recipients that obtained insurance through a self-insurance plan realized considerable savings in their premiums. Indeed, for some recipients, such as those in remote geographies, a self-insurance plan was the only coverage available.

This proposed rule is intended to ensure that NAHASDA's statutory requirement of adequate insurance is met in a cost-effective manner by regulating the provision of insurance for IHBG-assisted properties. In the absence of reasonably detailed national guidelines for tribally owned Indian housing insurance entities, HUD fears a repeat of the 1986 situation where there will be no insurance coverage available for affordable Indian housing. The cost of compliance with duplicative or conflicting state or local requirements would cause IHBG recipients to divert scarce IHBG funds for affordable housing and limit the recipients' options, thereby failing to fulfill the intent of Congress ''to assist and promote affordable housing activities'' (section 201(a) of NAHASDA, 25 U.S.C. 4131(a)(1)). Nonprofit self-insurance pools that are wholly owned and controlled by IHBG recipients further NAHASDA's primary objective ''to promote self-sufficiency of Indian tribes'' (section 201(a)(2) of NAHASDA, 25 U.S.C. 4131(a)(2)) by permitting tribal recipients to use nonprofit self-insurance plans as an alternative risk financing mechanism to reduce the cost and expense of maintaining adequate insurance coverage for affordable housing assisted by IHBG. Uniform national federal regulation of nonprofit self-insurance plans maximizes the economies of scale for Indian tribes located in different states and fosters efficient pooling of self-insurance risks by removing the possibility of duplicative or conflicting state requirements. Therefore, HUD believes that this rule, which sets guidelines for tribally-owned insurance pools for tribal housing and provides for a limited preemption of state and local law, is necessary.

II. This Proposed Rule

This proposed rule would provide regulations for a self-insurance plan for housing assisted under the IHBG program. This rule governs all property insurance required for Indian Housing Block Grant housing, except for flood insurance required under 24 CFR 1000.38. Section 1000.38 remains unchanged. The regulations provide that the self-insurance plan be operated on a nonprofit basis and owned and controlled by IHBG funding recipients. The rule would provide criteria for management and underwriting staff experience as well as appropriate accounting and financial management. In order to ensure appropriate financial management, the rule would include an annual audit requirement. Also, the rule would provide for HUD approval and the ability of HUD to revoke its approval if an entity no longer meets the standards of this rule. The rule would preempt state and local laws to ensure that a participating Indian housing self-insurance entity has to meet a single set of criteria, thus enabling it to save in compliance costs.

The sole purpose of this rule is to establish regulatory standards for self-insurance entities. This rule does not establish any indemnification or other third-party rights against the federal government, either on behalf of the insurance entity or a party purchasing such insurance. In the Department's determination, HUD is not liable for any financial shortfall or loss resulting from the operation of self-insurance entities operating under the authority of this regulation.

III. Federalism Summary Impact Statement

In accordance with Executive Order 13132 (Federalism), and the Department's own policy on federalism, by letter dated December 16, 2004, the Department notified the attorneys general of each of the 50 states of its intention to promulgate regulations that would govern the insurance of tribal housing under the IHBG program. Because property insurance is regulated by state law, HUD recognized the necessity to consult and solicit the views of state governments on this issue. NAHASDA requires tribes and tribally designated housing entities to maintain adequate insurance for housing owned and operated using funds that the government provides under NAHASDA. Indian tribes may meet this statutory requirement through tribally owned and operated insurance entities. There is currently one such self-insurance entity; although, once the rule is promulgated, Indian tribes could establish additional ones.

The Department's December 16, 2004, letter described the current regulatory environment and stated the reason for promulgating the rule. While NAHASDA requires IHBG program recipients to maintain adequate insurance, HUD investigation, including feedback from IHBG program recipients, has determined that in many areas, adequate insurance for federally assisted Indian housing is either unavailable from private insurance companies or prohibitively expensive. The Department believes that the proposed rule will effectively address this issue by providing regulations under which IHBG program recipients can establish new self-insurance entities, and under which the sole existing IHBG self-insurance risk pool, AMERIND, can operate. Because state insurance laws could potentially conflict with the regulation intended to be established by this rulemaking and thereby defeat the important federal purpose underlying this rulemaking by subjecting tribally owned Indian housing insurance entities to widely varying and costly requirements, the Department determined it was necessary to preempt state law in the area of housing insurance for tribally-owned and operated housing. The preemptive effect of this rule is limited to this one area. HUD requested views and comments from the state attorneys general by January 31, 2005. A number of states responded with requests for further clarifications, which HUD provided. Other states asked for copies of the rule or provided a contact point for further information.

On January 27, 2005, a trade association wrote to HUD on behalf of its members seeking an extension of time until February 15, 2005, for the association and its members to provide any additional comments they might have. HUD agreed to this extension. HUD did not receive further correspondence from the association or its members.

The December 16, 2004, letter provided the first step in HUD's consultation process on this rulemaking. HUD welcomes and will consider further comments from the states on this rulemaking. HUD believes that given the limited nature of the preemption, the fact that the limited preemption is necessary to ensure that insurance services for federally assisted housing on tribal lands are provided as required by federal law, and the limited number of self-insurance entities involved, regulatory preemption is appropriate in this case.

IV. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the rulemaking process on matters that have tribal implications. Accordingly, on April 12, 2005, HUD sent letters to all eligible funding recipients under NAHASDA and their tribally designated housing entities informing them of the nature of the forthcoming rule and soliciting comments. The deadline for comments under this informal consultation was June 3, 2005. The Department received five responses to the April 12, 2005, consultation letter. HUD has attempted to address all the issues raised by the tribes in this proposed rule. In addition, tribes have the opportunity to comment on this proposed rule, and HUD welcomes such comment.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
1000.139	1	1	10	10

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the interim rule, however. Comments must refer to the proposal by name and docket number (FR–4897) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503. Fax number: (202) 395–6974 and

Sherry Fobear-McCown, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4255, Washington, DC 20410–0500.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321*et seq.*).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This proposed rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule governs only the provision of insurance for IHBG-assisted housing by entities wholly owned and controlled by IHBG recipients. Because there is only one such entity currently in existence, the number of entities affected is not substantial. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding the determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. HUD has determined that the policies contained in this proposed rule have federalism implications, and are subject to review under the order. Specifically, the rule provides for preemption of state regulation of tribal housing self-insurance entities in their coverage of federally assisted housing. HUD's

federalism summary impact statement, as required by section 6(b)(2)(B) of the Executive Order, and which discusses this matter in more detail, is presented in Section III of this preamble.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Grant programs—housing and community development, Grant programs-Indians, Individuals with disabilities, Low- and moderate-income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 1000 as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

1. The authority citation for 24 CFR Part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Subpart B—Affordable Housing Activities

2. Add a new § 1000.139, to read as follows:

§ 1000.139 What are the standards for insurance entities owned and controlled by recipients?

(a) *General.* A recipient may provide insurance coverage required by section 203(c) of NAHASDA and §§ 1000.136 and 1000.138 through a self-insurance plan, approved by HUD in accordance with this section, provided by a nonprofit insurance entity that is wholly owned and controlled by IHBG recipients.

(b) *Self-insurance plan.* An Indian housing self-insurance plan must be shown to meet the requirements of paragraph (c) of this section.

(c) *Application.* For a self-insurance plan to be approved by HUD, an application and supporting materials must be submitted containing the information specified in paragraphs (c)(1) through (c)(9) of this section. Any material changes made to these documents after initial approval must be submitted to HUD. Adverse material changes may cause HUD to revoke its approval of a self-insurance entity. The application submitted to HUD must show that:

(1) The plan is organized as an insurance entity, tribal self-insurance plan, tribal risk retention group, or Indian housing self-insurance risk pool;

(2) The plan limits participation to IHBG recipients;

(3) The plan operates on a nonprofit basis;

(4)(i) The plan employs or contracts with a third party to provide competent underwriting and management staff;

(A) The underwriting staff must be composed of insurance professionals with an average of at least five years of experience in large risk commercial underwriting exceeding $100,000 in annual premiums or at least five years of experience in underwriting risks for public entity plans of self-insurance;

(B) The management staff must have at least one senior manager who has a minimum of five years of insurance experience at the level of vice president of a property or casualty insurance entity; as a senior branch manager of a branch office with annual property or casualty premiums exceeding five million dollars; or as a senior manager of a public entity self-insurance risk pool;

(ii) Satisfaction of this requirement may be demonstrated by evidence such as résumés and employment history of the underwriting staff for the plan and of the key management staff with day-to-day operational oversight of the plan;

(5) The plan maintains internal controls and cost containment measures, as shown by the annual budget;

(6) The plan maintains sound investments consistent with its articles of incorporation, charter, bylaws, risk pool agreement, or other applicable organizational document or agreement concerning investments;

(7) The plan maintains adequate surplus and reserves as determined by HUD for undischarged liabilities of all types, as shown by a current audited financial statement and an actuarial review conducted in accordance with paragraph (e) of this section;

(8) The plan has proper organizational documentation as shown by copies of the articles of incorporation, charter, bylaws, subscription agreement, business plan, contracts with third-party administrators, and other organizational documents; and

(9) A plan's first successful application for approval under this section must also include an opinion from the plan's legal counsel that the plan is properly chartered, incorporated, or otherwise formed under applicable law.

(d) *HUD consideration of plan.* HUD will consider an application for approval of a self-insurance plan submitted under this section and approve or disapprove that application no later than 90 days from the date of receipt of a complete application. If an application is disapproved, HUD shall notify the applicant of the reasons for disapproval and may offer technical assistance to a recipient to help the recipient correct the deficiencies in the application. The recipient may then resubmit the application under this section.

(e) *Annual reporting.* An approved plan must undergo an audit and actuarial review annually. In addition, an evaluation of the plan's management must be performed by an insurance professional every three years. These audits, actuarial reviews, and management reviews must be submitted to HUD within 90 days after the end of the insuring entity's fiscal year and be prepared in accordance with the following standards:

(1) The annual financial statement must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent auditor in accordance with generally accepted government auditing standards. The independent auditor shall state in writing an opinion on whether the plan's financial statement is presented fairly in accordance with GAAP;

(2) The actuarial review of the plan shall be done consistently with requirements established by the Association of Governmental Risk Pools and conducted by an independent property or casualty actuary who is a member of a recognized professional actuarial organization, such as the American Academy of Actuaries. The report issued and submitted to HUD must include the actuary's written opinion on any over-or under-reserving and the adequacy of the reserve

maintained for open claims and for incurred but unreported claims;

(3) The management review must be prepared by an independent insurance consultant who has received the professional designation of a chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), and cover the following:

(i) The efficiency of the management or third-party administrator of the plan;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance or excess insurance coverage.

(f) *Revocation of approval.* HUD may revoke its approval of a plan under this section when the plan no longer meets the requirements of this section. The plan's management will be notified in writing of the proposed revocation of its approval, and of the manner and time in which to request a hearing to challenge the determination in accordance with the dispute resolution procedures set forth in this part for model housing activities (§ 1000.118).

(g) *Preemption.* Any self-insurance plan under this section that meets the requirements of this section and that has been approved by HUD shall be governed exclusively by these regulations in its provision of insurance for IHBG-assisted housing. The plan shall not be bound by or subject to any state or local law that imposes conflicting or additional requirements, nor shall the plan avoid the requirements of these regulations on the ground that such avoidance is permissible under state or local law.

Dated: February 7, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E6–3186 Filed 3–6–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
March 7, 2006

Part III

Department of Housing and Urban Development

Notice of Outcome Performance Measurement System for Community Planning and Development Formula Grant Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4970–N–02]

Notice of Outcome Performance Measurement System for Community Planning and Development Formula Grant Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On June 10, 2005, HUD's Office of Community Planning and Development (CPD) published a notice in the **Federal Register** titled, ''Notice of Proposed Outcome Performance Measurement System for Community Planning and Development Formula Grant Programs; Request for Comments.'' The notice described an outcome performance measurement system that was developed for grantees that receive funding from the Community Development Block Grant program (CDBG), HOME Investment Partnerships program (HOME), Emergency Shelter Grants program (ESG), and the Housing Opportunities for Persons with AIDS program (HOPWA).

The system was developed by a joint working group made up of members of the Council of State Community Development Agencies (COSCDA), the National Community Development Association (NCDA), the National Association for County Community Economic Development (NACCED), the National Association of Housing and Redevelopment Officials (NAHRO), the National Council of State Housing Agencies (NCSHA), CPD, HUD's Office of Policy Development and Research (PD&R), and the Office of Management and Budget (OMB). The June 10, 2005, notice described the proposed system and solicited comments from the public, particularly from formula program grantees, on the proposed performance measurement system. This final notice discusses and addresses the comments received and incorporates appropriate changes.

FOR FURTHER INFORMATION CONTACT: Margy Coccodrilli, CPD Specialist, Office of Block Grant Assistance, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1577, extension 4507 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Government Performance and Results Act of 1993 (GPRA) mandates that federal programs improve their effectiveness and public accountability by focusing on results. The OMB developed the Program Assessment Rating Tool (PART) to monitor compliance with the GPRA and to rate federal programs for their effectiveness and ability to show results.

Many CPD grantees have been frustrated by the inability to ''tell their story'' to their citizens and other stakeholders about the outcomes of the investments they have made in their communities using federal, state, and local resources. The inability to clearly demonstrate program results at the national level, which is the standard required by OMB's program assessment process, can have serious consequences for program budgets. On June 10, 2005, HUD published (70 FR 34044), a notice describing a proposed outcome performance measurement system and solicited comments. The system would enable HUD to collect information on the outcomes of activities funded with CPD formula grant assistance, and to aggregate that information at the national and local level. Reports would be made available to allow grantees to compare their performance to that of their peers. Based on the proposed system and taking into consideration the comments received, this notice establishes the outcome performance measurement system. This system is not intended to replace existing local performance measurement systems that are used to inform local planning and management decisions and increase public accountability.

This performance measurement system will be incorporated into HUD's Integrated Disbursement and Information System (IDIS), thus allowing for simplified data collection. The objectives and outcomes will appear on IDIS screens and grantees will select the objective and outcome that applies to each activity that the grantee undertakes. The indicators will be generated according to the matrix code, and for CDBG grantees, by the national objective. The possible indicators for each activity will also appear on an IDIS screen and the grantee will indicate which indicator(s) apply to that activity, as carried out by the grantee.

The indicators in this framework represent most of the activities that are undertaken by grantees of the CPD formula grant programs, but HUD acknowledges that there may be some activities that may not fit well into any of the indicator categories. While such activities may be very important to local interests, their numbers would not make a significant impact on a national level and could create a burden for other grantees. Therefore, the joint working group that developed the system decided to include indicators that can encompass most of the activities undertaken by grantees.

Separate from what the new performance measurement system can provide, the Department would like to be able to demonstrate potential outcomes such as higher homeownership rates and property valuations, lower unemployment rates and improved education levels, increased commercial and private investments, and additional assisted businesses that remain operational for at least three years. HUD will consult with the working group, grantees, and other interested parties to determine whether and how a set of particular community-level outcome measures can be established and uniformly applied. In the future, HUD may use the same or similar universal measures and standards to assess performance in other federal economic and community development programs. For example, HUD intends to obtain information on the development of brownfields and will consult with grantees on how best to collect such information. HUD will also undertake research to address such issues, and determine how frequently to assess progress, evaluate programs, perform analyses, and disseminate results based upon data that is comparable and generally available.

The structure of the new performance measurement system is consistent with the goals and objectives contained in HUD's Strategic Plan for the years 2006 to 2011, including expanding access to affordable housing, fostering a suitable living environment, and expanding economic opportunities.

The objectives, outcomes, and indicators described in this notice will appear this spring in the existing version of IDIS. Grantees will be requested to enter available data at that time. This fall, Phase I of the re-engineered IDIS will be released and grantees will be required to enter the performance data.

When Phase II of the re-engineered IDIS is released, HUD expects the overall administrative burden for grantees to be reduced; HUD's intent is to have the Consolidated Plan, Annual Action Plan, and Consolidated Annual Performance and Evaluation Report (CAPER) integrated into one single performance measurement system. In the interim, elements of the system may

be incorporated into the Consolidated Plan Management Process (CPMP) Tool so that local objectives and outcomes can be entered at the beginning of the Consolidated Plan or Annual Action Plan development process, and accomplishments under those objectives and outcomes can be reported on in the CAPER.

II. Discussion of Public Comments

General Comments

The public comment period closed on September 8, 2005. In addition to the 56 comments submitted in writing to HUD headquarters, additional comments were received during an interactive satellite broadcast from HUD headquarters in Washington, DC, and five regional feedback sessions that were held in San Francisco, Philadelphia, Detroit, Atlanta, and Austin. Each of those events provided opportunities for public comment.

There were multiple requests for HUD to develop a performance measurement Web site that would contain all the information that has been made available. That request has been acknowledged and there is now a CPD Web site that hosts this information. The URL is: *http://www.hud.gov/offices/cpd/about/performance/index.cfm*.

A number of comments praised the outcome measurement system and thanked HUD and the working group for the simplicity of the system; also, many comments posed questions. These questions are addressed in a question and answer format that has been distributed to grantees and is available on the Performance Measurement Web site. Several comments requested clarification of terms and definitions. These have been provided to grantees and are available on CPD's Performance Measurement website.

There were also many comments made about IDIS that were important to that system, but not necessarily relevant to the inclusion of the performance measurement indicators. Those comments have been forwarded to CPD's System Development and Evaluation Division. There were also comments on the Consolidated Plan Management Process and those comments have been forwarded to CPD's Office of Policy Development and Coordination.

Many comments suggested that issues and terminology of local interest be added to the framework. Unfortunately, because the framework was developed to capture national indicators in a standardized format, unique local information cannot be included. However in CPD Notice 03–09, issued in September 2003, HUD encouraged grantees to develop local performance measurement systems that complement this new national system by capturing the results of activities of local importance.

Specific Comments

Comment—There were several comments indicating that these performance measures should replace Consolidated Plans, Annual Action Plans, Consolidated Annual Performance and Evaluation Reports (CAPER), and Performance Evaluation Reports (PER).

Response—HUD anticipates that when Phase II of the IDIS re-engineering is complete in 2007, Consolidated Plans, Annual Action Plans, CAPERs, and PERs will become one continuous document.

Comment—There were several comments indicating the need for training on the performance measurement system and generally on IDIS, and specific training for entitlements, states, and urban counties, sub-recipients; training grantees to train their sub-recipients; and guidance/training on how the indicators apply to each program.

Response—HUD expects to provide training on IDIS in 2006. This training will incorporate the performance measurement framework; also, HUD has prepared guidance, questions and answers, and definitions. This, along with other related information, are available on CPD's Performance Measurement website.

Comment—Several commenters indicated that changes to administrative procedures, and possibly to grantee staffing, would have to be made at the local level and some asked that HUD provide assistance to tell grantees how this should be done.

Response—HUD will provide training on what data will need to be collected, but grantees will determine within their own administrative procedures how to coordinate the front-end planning, implementation, and reporting of activities. Because grantee procedures vary significantly based on agency size and expertise, HUD is not the appropriate entity to develop local administrative procedures for grantees.

Comment—Some comments referred to the difficulty that grantees would have in developing outcome statements.

Response—HUD will use the data that are reported and aggregated in IDIS to develop the outcome statements. If a jurisdiction has an activity that does not fit into the framework, that grantee may create an outcome statement in the narrative of the CAPER or PER to provide information to their citizens about the results of the activity.

Comment—Comments asked that HUD clarify the timing of when grantees will begin using the performance measurement system.

Response—The elements of the outcome performance measurement system will appear in the existing version of IDIS in Spring 2006. Because of the need for HUD to show results, grantees will be requested to enter data as soon as the system is available. Later in 2006, Phase I of the re-engineered IDIS will be released. At that time, grantees will be required to enter the performance data into the system.

Comment—There were comments suggesting that 40 percent be included in the breakout of numbers for area median income because this number would help show the percentage of ''working poor;'' that many projects exceed the HOME program minimum levels and assist persons between 30 percent and 50 percent; and that breaking down those income levels would cause additional work for CDBG grantees.

Response—Individual program requirements dictate the income percentages that are to be reported. Therefore, grantees need only provide the information that is currently required for each specific program. The area median income percentages published in this notice reflect the range of information required by all four CPD formula grants. When grantees enter data for activities into IDIS, only the income percentages applicable to those program activities will be populated for selection.

Comment—Several commenters urged HUD to provide sufficient time for grantees to revise forms and other business practices, that data collection should not begin until the re-engineered IDIS is available, and that information pertinent to these changes should be made available to grantees as soon as possible.

Response—On October 28, 2005, CPD issued a memo that provided the basic information needed to revise forms, such as applications from sub-recipients for funding, sub-recipient agreements, and client applications. Grantees could also use that memo to begin to plan for any administrative changes that might be required.

Comment—Some commenters requested that an indicator for section 504 compliance be included for owner-occupied housing units.

Response—HUD agrees. Although section 504 does not apply to homeowners, the accessibility indicator has been added for owner-occupied

units that are made accessible for persons with disabilities.

Comment—One comment received stated that there was no way in the system to report female heads of household.

Response—In IDIS, grantees are currently required to report the number of female heads of household for housing activities that meet the national objective of low-mod housing; therefore, no additional data is required.

Comment—Several comments reflected the need for additional resources to cover the added costs of administrative workload, training, and technology development.

Response—HUD is making every effort to minimize workload burden. HUD expects the increased administrative workload to be reduced as HUD streamlines the planning and reporting requirements. While plans for training are not yet complete, HUD will attempt to reduce grantee costs by conducting training using technology such as the Performance Measurements Web site, broadcasts, and Web casts, and possibly local training provided through field offices. Also, HUD expects to provide training at conferences of the national associations that were involved in the development of the system.

Comment—Several commenters asked HUD to develop sample forms that can be used to collect the additional data.

Response—Since grantees differ greatly in administrative procedures, based on agency size and expertise, HUD is not the appropriate entity to develop specific sample forms. However, HUD will provide guidance on data collection that will assist grantees in adding appropriate language to existing forms.

Comment—There were several comments that suggested changes to the flow chart that was included in the proposed outcome performance measurement system.

Response—The flow chart could not be designed to accommodate the various requests and the full scope of all activities. Because many commenters considered the flow chart to provide little value, it has been removed from the final notice of the outcome performance measurement system.

Comment—Several comments stated that ESG and HOPWA indicators should include case management.

Response—HOPWA case management activities will be reported in the HOPWA Annual Performance Reports and later in IDIS. ESG does not currently collect information on case management activities in IDIS.

Comment—Several comments indicated that the system should provide the ability to capture more than one objective and more than one outcome for each activity.

Response—The objectives closely mirror the statutory objectives of each program. Grantees will select the one objective that the activity is intended to meet. To prevent the dilution of data and capture the largest numbers possible for each outcome, grantees are encouraged to select the outcome that best describes the result of the activity. However, if a grantee feels strongly that an activity is best represented by two outcomes, it would indicate the primary outcome and the additional outcome.

Comment—There were comments suggesting that only indicators required by each specific program should be required for reporting.

Response—Both the proposed and final notices state that grantees will report these data only if the indicator is appropriate to the program.

Comment—One comment stated that Community Housing Development Organization (CHDO) operating costs should not be included in the system.

Response—Up to 5 percent of a participating jurisdiction's HOME allocation may be used to pay eligible CHDO operating costs. However, the use of HOME funds for this purpose, or for administrative costs generally, does not directly result in a measurable output in terms of affordable housing units produced or households assisted. In fact, the use of HOME funds to cover CHDO operating costs actually reduces that amount of funds that would otherwise be available for projects. Consequently, while CHDO operating support funds are necessary in many instances, HUD agrees with the commenter that it would not be appropriate to include the use of CHDO operating costs as an indicator in a system focused on measuring performance.

Comment—One comment indicated that the list of indicators should not be increased without careful evaluation and input from the working group.

Response—The working group has continued to provide evaluation and input on the development and implementation of the outcome performance measurement system.

Comment—Many comments suggested possible changes to the indicators or additional indicators to be included to the proposed outcome performance measurement system.

Response—HUD carefully considered each suggestion. Some of the suggestions were incorporated into the framework, while others reflected changes that were already planned for inclusion in the re-engineering of IDIS. HUD believes that the indicators included in the outcome performance measurement system published herein reflect most of the activities undertaken by grantees. However, if it becomes apparent that additional data elements are necessary, other indicators can be added to the system at a later date.

Comment—Several comments questioned the difference between International Building Code Energy (IBCE) Standards, and the International Energy Conservation Code (IECC), and the inclusion of Energy Star Standards as a subset of a larger code.

Response—Most states and local governments have adopted one or more International Code Council (ICC) building codes. The ICC codes have replaced other prior model codes, resulting in many different building codes. HUD has determined that identifying only IBCE or IECC and not identifying other possible codes would create incomplete data, as well as confusion over which codes to use. Therefore, the data elements for building energy codes have been deleted. In 2002, HUD entered into a memorandum of understanding with the Environmental Protection Agency (EPA) and the Department of Energy (DOE) to promote the use of Energy Star in HUD's affordable housing programs. Therefore, Energy Star will remain as a data element for energy conservation activities for the housing indicator categories in the performance measurement system.

Comment—There were comments about the use of the NAICS industry classification codes and whether the codes would be available in a drop-down format in IDIS.

Response—HUD has concluded that the large number of NAICS classification codes will create a reporting burden for grantees and businesses and therefore has deleted that data element.

III. Environmental Impact

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: March 1, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210–67–P

CPD Outcome Performance Measurement System

BACKGROUND

A working group, established by and composed of representatives from national housing and community development associations as well as HUD and the Office of Management and Budget (OMB), began holding monthly meetings in June 2004 for the purpose of developing an outcome performance measurement system for key HUD housing and community development programs. The working group was made up of grantee representatives from the Council of State Community Development Agencies (COSCDA), the National Community Development Association (NCDA), the National Association for County Community Economic Development (NACCED), the National Association of Housing and Redevelopment Officials (NAHRO), the National Council of State Housing Agencies (NCSHA), HUD's Offices of Community Planning and Development (CPD) and Policy Development and Research (PD&R), and the Office of Management and Budget (OMB).

The members of this working group finalized their work and reached agreement on an outcome performance measurement system to propose for grantees that receive funding from the Community Development Block Grant program (CDBG), the HOME Investment Partnerships Program (HOME), the Emergency Shelter Grant program (ESG), and the Housing Opportunities for Persons with AIDS program (HOPWA) formula grants. The proposed Outcome Performance Measurement System was published in the Federal Register on June 10, 2005 (70 FR 34044). The final outcome performance measurement system includes objectives, outcome measures, and indicators that describe outputs. The objectives are: Creating Suitable Living Environments, Providing Decent Affordable Housing, and Creating Economic Opportunities. The outcome categories are: Accessibility/Availability, Affordability, and Sustainability. There is a standardized list of output indicators that grantees will report on as appropriate for their chosen objectives and outcomes. Although the system is not designed to capture every activity, HUD is confident that the list is broad enough that the results of a significant amount of activities of each of the programs will be reported. Most of the output indicators required by the system do not require additional data collection or reporting.

Grantees shall incorporate performance measurements into consolidated plans or annual action plans prepared for Fiscal Year (FY) 2007 CDBG, HOME, ESG, and HOPWA funding. This will include the determination of an objective and selection of an outcome for each activity, based on the type of activity and its purpose. HUD realizes that some grantees have already completed preparation of their FY2006 plans, while others are well into the planning and development process. However, where possible, grantees should **immediately** incorporate the new performance measurements approach into consolidated plans or annual action plans that are being prepared for FY2006 funds. This will allow grantees to have a better capability to enter the expected data into IDIS, as discussed below. If a grantee has already submitted its FY2006 consolidated plan or action plan to HUD and the plan has been approved, adding new performance measurement features to the plan does not constitute an amendment under §91.505(a); however, the grantee should determine whether this addition is an amendment under its citizen participation plan.

IDIS will begin accepting data in Spring 2006 and HUD is strongly encouraging every grantee to begin to enter data at that time for all completed activities, based on information that is available. The objectives and indicators reported in IDIS will reflect the rationale for funding that activity. The outcome will be based on the result the grantee hoped to achieve by funding the activity. The indicators will describe, in numerical terms, any particular benefit that the activity produced. In Fall 2006, it will become mandatory for all formula grantees to enter the required performance measurement data (objectives, outcomes, and indicators) into IDIS for all existing activities with a status of budgeted or underway as of the beginning of FY2007, as well as for all new activities.

Grantees are only required to report the indicators that appear for each activity; however, if a jurisdiction has activities that are not covered by these indicators, grantees can manually report any objectives, outcomes, and indicators in the narrative section of the Consolidated Annual Performance and Evaluation Report (CAPER) or State Performance Evaluation Report (PER), or HOPWA Annual Performance Report (APR).

The system has been designed to enable grantees and HUD to inform Congress, OMB, and the public of many of the outcomes of the covered programs. The goal is to begin focusing on more outcome-oriented information and be able to aggregate results across the broad spectrum of programs funded by these block grants at the city, county, and state level.

HOW WILL IT WORK?

Based on the intent when funding an activity, grantees will determine which of the three objectives best describes the purpose of the activity. The objectives will appear on an IDIS screen and the grantee will choose from the options presented. The three objectives are:

Suitable Living Environment - In general, this objective relates to activities that are designed to benefit communities, families, or individuals by addressing issues in their living environment.

Decent Housing - The activities that typically would be found under this objective are designed to cover the wide range of housing possible under HOME, CDBG, HOPWA or ESG. This objective focuses on housing programs where the purpose of the program is to meet individual family or community needs and not programs where housing is an element of a larger effort, since such programs would be more appropriately reported under Suitable Living Environment.

Creating Economic Opportunities - This objective applies to the types of activities related to economic development, commercial revitalization, or job creation.

Similarly, once the objective for the activity is selected, the grantee will then choose which of the three outcome categories best reflects what they are seeking to achieve by funding that activity, and then enter the outcome on the appropriate IDIS screen. It is important that the data are not diluted by too much information. Therefore, grantees are encouraged to report which one of the three outcomes is most appropriate for their activity. However, if the grantee believes that two outcomes of equal importance will be realized, then a second outcome may also be selected. The three outcome categories are:

Availability/Accessibility. This outcome category applies to activities that make services, infrastructure, public services, public facilities, housing, or shelter available or accessible to low- and moderate-income people, including persons with disabilities. In this category, accessibility does not refer only to physical barriers, but also to making the affordable basics of daily living available and accessible to low and moderate income people where they live.

Affordability. This outcome category applies to activities that provide affordability in a variety of ways in the lives of low- and moderate-income people. It can include the creation or maintenance of affordable housing, basic infrastructure hook-ups, or services such as transportation or day care.

Sustainability: Promoting Livable or Viable Communities. This outcome applies to projects where the activity or activities are aimed at improving communities or neighborhoods, helping to make them livable or viable by providing benefit to persons of low- and moderate-income or by removing or eliminating slums or blighted areas, through multiple activities or services that sustain communities or neighborhoods.

Each outcome category can be connected to each of the overarching objectives, resulting in a total of nine groups of outcome/objective statements under which grantees would report the activity or project data to document the results of their activities or projects. Each activity will provide one of the following statements, although sometimes an adjective such as new, improved, or corrective may be appropriate to refine the outcome statement.

- Accessibility for the purpose of creating suitable living environments
- Accessibility for the purpose of providing decent affordable housing
- Accessibility for the purpose of creating economic opportunities
- Affordability for purpose of creating suitable living environments
- Affordability for the purpose of providing decent affordable housing
- Affordability for the purpose of creating economic opportunities
- Sustainability for the purpose of creating suitable living environments
- Sustainability for the purpose of providing decent affordable housing
- Sustainability for the purpose of creating economic opportunity

Based on the objectives and outcomes selected, and, in the case of CDBG activities the national objective selected, IDIS will identify the specific indicators for each activity. Only the specific indicators appropriate for that activity will be available for grantees to report. Thus, the process of identifying and selecting indicators will be minimized. The objective and outcomes will combine with the activity indicator data to produce statements of national significance regarding the results of the activity.

The specific indicators are described in this notice. Grantees are reminded that these indicators will be incorporated into IDIS and, therefore, will appear on screens and not in the written format shown here. Grantees will only report this data if the indicator is a requirement of the program from which the activity is funded.

There are certain data elements commonly reported by all programs, although each of the four programs may require different specificity or may not require each element listed below. Grantees will only report the information required for each program, as currently required. No new reporting requirements are being imposed for program activities that do not currently collect these data elements. The elements include:

- Amount of money leveraged (from other federal, state, local, and private sources) per activity;
- Number of persons, households, units, or beds assisted, as appropriate;
- Income levels of persons or households by: 30 percent, 50 percent, 60 percent, or 80 percent of area median income, per applicable program requirements. However, if a CDBG activity benefits a target area, that activity will show the total number of persons served and the percentage of low/mod persons served. Note that this requirement is not applicable for economic development activities awarding funding on a "made available basis;"
- Race, ethnicity, and disability (for activities in programs that currently report these data elements)

HUD will combine the objectives, outcomes, and data reported for the indicators to produce outcome narratives that will be comprehensive and will demonstrate the benefits that result from the expenditure of these federal funds.

This system maintains the flexibility of the block grant programs, as the objectives, outcomes, and indicators will be determined by the grantees, based on the intent of the activities they choose to fund. The standardized format provides that reporting will be uniform, and therefore the achievements of these programs can be aggregated for each grantee locally and for all grantees at the national level.

Specific Outcome Indicators

1) Public facility or infrastructure activities

Number of persons assisted:

- with new access to a facility or infrastructure benefit
- with improved access to a facility or infrastructure benefit
- where activity was used to meet a quality standard or measurably improved quality, report the number that no longer only have access to a substandard facility or infrastructure

2) Public service activities

Number of persons assisted:

- with new access to a service
- with improved access to a service
- where activity was used to meet a quality standard or measurably improved quality, report the number that no longer only have access to substandard service

3) Activities are part of a geographically targeted revitalization effort (Y/N)?

If Yes (check one)

a) Comprehensive
b) Commercial
c) Housing
d) Other

Choose all the indicators that apply, or at least 3 indicators if the effort is (a) Comprehensive.

- Number of new businesses assisted
- Number of businesses retained
- Number of jobs created or retained in target area
- Amount of money leveraged (from other public or private sources)
- Number of low- or moderate-income (LMI) persons served
- Slum/blight demolition
- Number of LMI households assisted
- Number of acres of remediated brownfields
- Number of households with new or improved access to public facilities/services
- Number of commercial façade treatment/business building rehab
- Optional indicators a grantee may elect to use include crime rates, property value change, housing code violations, business occupancy rates, employment rates, homeownership rates (optional)

4) Number of commercial façade treatment/business building rehab (site, not target area based)

5) Number of acres of brownfields remediated (site, not target area based)

6) New rental units constructed per project or activity

Total number of units:

Of total:

Number affordable
Number section 504 accessible
Number qualified as Energy Star

Of the affordable units:

Number occupied by elderly
Number subsidized with project-based rental assistance (federal, state, or local program)
Number of years of affordability
Number of housing units designated for persons with HIV/AIDS, including those units receiving assistance for operations
Of those, number of units for the chronically homeless

Number of units of permanent housing designated for homeless persons and families, including those units receiving assistance for operations
Of those, number of units for the chronically homeless

7) Rental units rehabilitated

Total number of units:

Of total:
Number affordable
Number section 504 accessible
Number of units created through conversion of nonresidential buildings to residential buildings
Number brought from substandard to standard condition (HQS or local code)
Number qualified as Energy Star
Number brought into compliance with lead safe housing rule (24 CFR part 35)

Of those affordable:
Number occupied by elderly
Number subsidized with project-based rental assistance (federal, state or local program)
Number of years of affordability
Number of housing units designated for persons with HIV/AIDS, including those units receiving assistance for operations
Of those, the number of units for the chronically homeless
Number of units of permanent housing for homeless persons and families, including those units receiving assistance for operations
Of those, number of units for the chronically homeless

8) Homeownership Units Constructed, Acquired, and/or Acquired with Rehabilitation (per project or activity)

Total number of units

Of those:
Number of affordable units
Number of years of affordability
Number qualified as Energy Star
Number section 504 accessible
Number of households previously living in subsidized housing

Of those affordable:
Number occupied by elderly
Number specifically designated for persons with HIV/AIDS
Of those, the number specifically for chronically homeless
Number specifically designated for homeless
Of those, number specifically for chronically homeless

9) Owner occupied units rehabilitated or improved

Total number of units:

Number occupied by elderly
Number of units brought from substandard to standard condition (HQS or local code)
Number qualified as Energy Star
Number of units brought into compliance with lead safe housing rule (24 CFR part 35)
Number of units made accessible for persons with disabilities

10) Direct Financial Assistance to homebuyers

Number of first-time homebuyers
Of those, number receiving housing counseling

Number receiving down-payment assistance/closing costs

11) Tenant-Based Rental Assistance

Total Number of Households

Of those:
Number with short-term rental assistance (less than 12 months)
Number of homeless households
Of those, number of chronically homeless households

12) Number of homeless persons given overnight shelter

13) Number of beds created in overnight shelter or other emergency housing

14) Homelessness Prevention

- Number of households that received emergency financial assistance to prevent homelessness
- Number of households that received emergency legal assistance to prevent homelessness

15) Jobs created

Total number of jobs

Employer-sponsored health care (Y/N)
Type of jobs created (use existing Economic Development Administration (EDA) classification)
Employment status before taking job created:
Number of unemployed _____

16) Jobs retained

Total number of jobs

Employer-sponsored health care benefits

17) Businesses assisted

Total businesses assisted

New businesses assisted

Existing businesses assisted
Of those:
Business expansions
Business relocations

DUNS number(s) of businesses assisted

(HUD will use the DUNS numbers to track number of new businesses that remain operational for 3 years after assistance)

18) Does assisted business provide a good or service to meet needs of service area/neighborhood/community (to be determined by community)?

[FR Doc. 06–2174 Filed 3–3–06; 12:08 pm]
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Federal Register

Tuesday,
March 7, 2006

Part IV

Environmental Protection Agency

40 CFR Part 723

Premanufacture Notification Exemption for Polymers; Amendment of Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 723

[EPA–HQ–OPPT–2002–0051; FRL–7735–5]

RIN 2070–AD58

Premanufacture Notification Exemption for Polymers; Amendment of Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the polymer exemption rule, which provides an exemption from the premanufacture notification (PMN) requirements of the Toxic Substances Control Act (TSCA), to exclude from eligibility polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length. This proposed exclusion includes polymers that contain any one or more of the following: Perfluoroalkyl sulfonates (PFAS); perfluoroalkyl carboxylates (PFAC); fluorotelomers; or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. If finalized as proposed, any person who intends to manufacture (or import) any of these polymers not already on the TSCA Inventory would have to complete the TSCA premanufacture review process prior to commencing the manufacture or import of such polymers. EPA believes this proposed change to the current regulation is necessary because, based on recent information, EPA can no longer conclude that these polymers ''will not present an unreasonable risk to human health or the environment,'' which is the determination necessary to support an exemption under TSCA, such as the polymer exemption rule.

DATES: Comments must be received on or before May 8, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2002–0051, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: oppt.ncic@epa.gov.*
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2002–0051. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2002–0051. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through regulations.gov or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Geraldine Hilton, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8986; e-mail address: *hilton.geraldine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or import polymers that contain as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length (''affected polymers''). As specified in the proposed regulatory text (§ 723.250(d)(6)), this includes polymers that contain any one or more of the following: PFAS; PFAC; fluorotelomers; or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. Persons who import or intend to import polymers that are covered by the final rule would be subject to TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Those persons must certify that they are in compliance with the PMN requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Importers of formulated products that contain a polymer that is a subject of this proposed rule as a component (for example, for use as a water-proof coating for textiles or as a top anti-reflective coating (TARC) used to manufacture integrated circuits) may also be potentially affected. A list of potential monomers and reactants that could be used to manufacture polymers

that would be affected by this rulemaking may be found in the public docket (Ref. 1). Potentially affected entities may include, but are not limited to:

- Chemical manufacturers or importers (NAICS 325), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.
- Chemical exporters (NAICS 325), e.g., persons who export, or intend to export, one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 723.250. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The Agency is proposing to exclude from the polymer exemption rule (40 CFR 723.250), which exempts certain chemical substances from TSCA section 5 PMN requirements, polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length. This exclusion includes polymers that contain any one or more of the following: PFAS; PFAC; fluorotelomers; or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. The effective date of the final rule would be one year from the date of publication of the final rule. Manufacture or import of any of these polymers not already on the TSCA Inventory, including polymers currently being produced under the polymer exemption rule, would no longer be eligible for the polymer exemption and, in the case of continued manufacture or import after the effective date of the final rule, would require completion of the premanufacture review requirements under TSCA section 5(a)(1)(A) and 40 CFR part 720 prior to the effective date of the final rule. After expiration of the one year period between the publication date of the final rule and the effective date, the PMN requirement would apply in full to manufacturers and importers of all polymers that are subject to the final rule.

EPA is actively working with industry to develop more complete data on affected polymers. In light of these efforts, certain publicly available and confidential business information regarding the specific chemicals manufactured, current production volumes, uses/applications, environmental fate and effects, and toxicity of the polymeric materials that would be subject to this proposed rule has been made and continues to be made available to EPA on an ongoing basis. Accordingly, EPA may supplement the public docket for this proposed rule with relevant non-confidential business information as it is received by the Agency. Non-confidential information related to this proposed rule may also be found in administrative record number (AR) AR–226, which is the public administrative record that the Agency has established for perfluorinated chemicals generally. Interested parties should consult AR–226 for additional information on PFAS, PFAC, fluorotelomers, or other perfluoroalkyl moieties. To receive an index of AR–226, contact the EPA Docket Center by telephone: (202) 566–0280 or e-mail: *oppt.ncic@epa.gov*.

Additional information may be found in EPA Docket ID No. OPPT–2003–0012, which covers the Agency's enforceable consent agreement (ECA) process for certain of these chemicals. Instructions on accessing an EPA public docket are provided at the beginning of this document under **ADDRESSES**.

B. What is the Agency's Authority for Taking This Action?

Section 5(a)(1)(A) of TSCA requires persons to notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. Section 3(9) of TSCA defines a ''new chemical substance'' as any substance that is not on the Inventory of Chemical Substances compiled by EPA under section 8(b) of TSCA. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or any combination of such activities will not present an unreasonable risk of injury to human health or the environment. Section 5(h)(4) also authorizes EPA to amend or repeal such rules. EPA is acting under these authorities to amend the polymer exemption rule at 40 CFR 723.250.

C. Why is the Agency Taking This Action?

1. *Polymers containing PFAS or PFAC.* EPA is proposing to amend the polymer exemption rule, last amended in 1995, because the Agency has received information which suggests that polymers containing PFAS or PFAC may degrade and release fluorochemical

residual compounds into the environment. Once released, PFAS or PFAC are expected to persist in the environment, are expected to bioaccumulate, and are expected to be highly toxic. Accordingly, EPA believes that it can no longer make the determination that the manufacturing, processing, distribution in commerce, use, or disposal of polymers containing PFAS or PFAC ''will not present an unreasonable risk to human health or the environment'' as required under TSCA section 5(h)(4).

PFAS or PFAC are used in a variety of polymeric substances to impart oil and water resistance, stain and soil protection, and reduced flammability. The same features that make the polymeric coatings containing PFAS or PFAC useful, allow the polymeric compound to be stable to the natural environmental conditions that produce degradation. It has been demonstrated that PFAS or PFAC-containing compounds can undergo degradation (chemical, microbial, or photolytic) of the non-fluorinated portion of the molecule leaving the remaining perfluorinated acid untouched (Ref. 2). Further degradation of the perfluoroalkyl residual compounds is extremely difficult. Even under routine conditions of municipal waste incinerators (MWIs), the Agency believes that the PFAS and PFAC produced by oxidative thermal decomposition of the polymers will remain intact (the typical conditions of a MWI are not stringent enough to cleave the carbon-fluorine bonds) to be released into the environment. EPA has evidence that polymers containing PFAS or PFAC may degrade, possibly by incomplete incineration, and release these perfluorinated chemicals into the environment (Ref. 3).

EPA has received data on the PFAS and PFAC chemicals perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), respectively. Biological sampling recently revealed the presence of PFOS and PFOA in fish, birds, and mammals, including humans across the United States and in other countries. The widespread distribution of the chemicals suggests that PFOS and PFOA may bioaccumulate. PFOS and PFOA have a high level of toxicity and have shown liver, developmental, and reproductive toxicity at very low dose levels in exposed laboratory animals (Ref. 4).

Although the Agency has far more data on PFOS and PFOA than on other PFAS and PFAC chemicals, EPA believes that other PFAS and PFAC chemicals of CF3- or longer chain length may share similar toxicity, persistence and bioaccumulation characteristics. Based on currently available information, EPA believes that, while all PFAS and PFAC chemicals are expected to persist, the length of the perfluorinated chain may have an effect on the other areas of concern for these chemicals: Bioaccumulation and toxicity. PFAS and PFAC chemicals with longer carbon chain lengths may be of greater concern (Refs. 5, 6, and 7). EPA has insufficient evidence at this time, however, to definitively establish a lower carbon chain length limit to meet the ''will not present an unreasonable risk'' finding, which is the determination necessary to support an exemption under section 5(h)(4) of TSCA.

The Agency, working in cooperation with the fluorochemical industry, has been investigating the physicochemical properties, the environmental fate and distribution, and the toxicity of PFAS and PFAC chemicals, including polymers already in production. These data help the Agency to evaluate these polymers to ascertain any potential risks on a case-by-case basis.

2. *Polymers containing fluorotelomers or other perfluoroalkyl moieties.* EPA is also proposing to exclude from the exemption polymers that contain fluorotelomers, or that contain perfluoroalkyl moieties of a CF3- or longer chain length that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. EPA has received data on various perfluorinated chemical substances that indicate potential concerns and that the Agency should evaluate polymers that contain these perfluoroalkyl moieties through the PMN process. For example, the fluorotelomer alcohol 2-(perfluorooctyl)ethanol [678–39–7], also known as 8–2 alcohol, has been shown to degrade to form PFOA when exposed to activated sludge during accelerated biodegradation studies (Ref. 8).

Initial test data from a study in rats dosed with fluorotelomer alcohol and other preliminary animal studies on various telomeric products containing fluorocarbons structurally similar to PFAC or PFAS have demonstrated a variety of adverse effects including liver, kidney and thyroid effects (Ref. 9).

Preliminary investigations have demonstrated the presence of fluorotelomer alcohols in the air in 6 different cities (Ref. 10). This finding is significant because it is indicative of widespread fluorotelomer alcohol distribution and it further indicates that air may be a route of exposure to these chemicals, which can ultimately become PFOA. Fluorotelomer alcohols are generally incorporated into the polymers via covalent ester linkages, and it is possible that degradation of the polymers may result in release of the fluorotelomer alcohols to the environment.

Based on the presence of fluorotelomer alcohols in the air, the growing data demonstrating that fluorotelomer alcohols metabolize or degrade to generate PFOA (Ref. 11), the preliminary toxicity data on certain compounds containing fluorotelomers (such as the 8–2 alcohol), and the possibility that polymers containing fluorotelomers as an integral part of the polymer composition may degrade in the environment thereby releasing fluorotelomer alcohols or other perfluoroalkyl-containing substances, EPA believes that it can no longer conclude that polymers containing fluorotelomers as an integral part of the polymer composition ''will not present an unreasonable risk of injury to health or the environment'' as required for an exemption under section 5(h)(4) of TSCA. Therefore, EPA is proposing to exclude polymers that contain such fluorotelomers from the polymer exemption at 40 CFR 723.250.

Although EPA does not have specific data demonstrating that polymers containing perfluoroalkyl moieties other than PFAS, PFAC, or fluorotelomers present the same concerns as those containing PFAS, PFAC, or fluorotelomers, EPA is nevertheless proposing to exclude polymers containing perfluoroalkyl groups, consisting of a CF3- or longer chain length, that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule from the polymer exemption. Based on available data which indicates that compounds containing PFAS or PFAC may degrade in the environment thereby releasing the PFAS or PFAC moiety, and that fluorotelomers may degrade in the environment to form PFAC, EPA believes that it is possible for polymers containing these other types of perfluoroalkyl moieties to also degrade over time in the environment thereby releasing the perfluoroalkyl moiety. EPA also believes that once released, such moieties may potentially degrade to form PFAS or PFAC. EPA does not believe, therefore, that it can continue to make the ''will not present an unreasonable risk of injury to health or the environment'' finding for such polymers and is proposing to exclude them from the polymer exemption. EPA is specifically requesting comment on this aspect of the proposed rule. Please see Unit VII. of this document for

specific information that EPA is interested in obtaining to evaluate whether continued exemption for polymers containing fluorotelomers or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule is appropriate.

D. Would Manufacturers or Importers of Affected Polymers That Were Previously Manufactured Under the Terms of the Polymer Exemption Rule Need to Complete the PMN Review Process or to Cease Production?

This proposed rule would allow manufacturers or importers of affected polymers, who are in full compliance with the terms of the polymer exemption rule, to continue manufacture or import for a period of one year after the date of publication of the final rule. However, after the one-year period, polymers that are subject to the final rule (including affected polymers made under the polymer exemption rule since promulgation of the 1995 amendment to the rule) would no longer be eligible for exemption under the polymer exemption rule. Therefore, a person who intends to continue manufacturing or importing polymers subject to the final rule without interruption would have to complete the PMN review process before the effective date in order to comply with the final rule. Manufacturers or importers of polymers that are already on the Inventory of Chemical Substances compiled and published under section 8(b) of TSCA (15 U.S.C. 2607(b)) would not be affected by this proposed amendment. The PMN requirements in section 5(a) of TSCA apply only to new chemical substances which are those that are not included on the Inventory of Chemical Substances. However, several of the polymers that are already included on the Inventory of Chemical Substances are subject to control actions under TSCA section 5, including section 5(e) consent orders and section 5(a)(2) Significant New Use Rules (SNURS).

III. Summary of This Proposed Rule

A. Polymers Containing PFAS or PFAC

EPA is proposing to amend the polymer exemption rule (40 CFR 723.250) to exclude polymers containing PFAS or PFAC consisting of a CF3- or longer chain length from eligibility under the polymer exemption. This exclusion would be codified at 40 CFR 723.250(d)(6). EPA has received data on PFOS (a PFAS chemical containing a perfluoroalkyl moiety with eight carbon atoms) and PFOA (a PFAC chemical containing a perfluoroalkyl moiety with seven perfluorinated carbon atoms), that indicate that these chemicals are expected to persist and have the potential to bioaccumulate and be hazardous to human health and the environment. PFOS and PFOA have been found in the blood of workers exposed to the chemicals and in the general populations of the United States and other countries. They have also been found in many terrestrial and aquatic animal species worldwide. PFAS and PFAC chemicals used in the production of polymers may be released into the environment by degradation. It is possible, therefore, that the widespread presence of PFOS and PFOA in the environment may be due, in part, to the degradation of such polymers and the subsequent release of the PFAS and PFAC components into the environment. However, the method of degradation and environmental distribution is uncertain.

Animal test data for PFOS and PFOA have shown liver, developmental, and reproductive toxicity at very low exposure levels. Animal test data indicate that PFOA may cause cancer, and an epidemiologic study reported an increased incidence of bladder cancer mortality in a small number of workers at a plant that manufactures perfluorinated chemicals. The number of carbon atoms on the PFAS/PFAC component may influence the bioaccumulation potential and the toxicity. In particular, there is some evidence that PFAS/PFAC moieties with longer carbon chains may present greater concerns for bioaccumulation potential and toxicity than PFAS/PFAC moieties with shorter carbon chains (Refs. 5, 6, and 7). Although there is insufficient understanding available at present to determine the carbon number below which PFAS and PFAC chemicals ''will not present an unreasonable risk,'' efforts are underway to develop a better understanding of the environmental fate, bioaccumulation potential, and human and environmental toxicity of PFAS and PFAC chemicals with shorter carbon chains. At this time, however, EPA can no longer conclude that polymers containing PFAS or PFAC will not present an unreasonable risk to human health or the environment. Therefore, this proposed amendment would exclude polymers containing PFAS or PFAC from eligibility for exemption from TSCA section 5(a)(1)(A) reporting requirements for new chemical substances.

B. Polymers Containing Fluorotelomers or Other Perfluoroalkyl Moieties

EPA is also proposing to exclude from the polymer exemption rule polymers that contain fluorotelomers, or that contain perfluoroalkyl moieties of a CF3- or longer chain length that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymers molecule. EPA has concerns with respect to the potential health and environmental effects of these substances and the Agency believes that polymers containing such moieties should be subject to the premanufacture review process so that EPA can better evaluate and address these concerns.

As discussed in Unit IV.E., there is a growing body of data demonstrating that fluorotelomer alcohols metabolize or degrade to generate PFOA. Initial studies have also demonstrated toxic effects of certain compounds containing fluorotelomers (derived from the 8–2 alcohol). Preliminary investigations have found that fluorotelomer alcohols were present in the air above several cities, indicating that these substances may be widely distributed and that air may be a route of exposure. EPA believes that polymers containing fluorotelomers or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymers molecule may degrade in the environment thereby releasing fluorotelomer alcohols or other perfluoroalkyl-containing substances. Accordingly, EPA can no longer conclude that polymers containing fluorotelomers and these other perfluoroalkyl moieties ''will not present an unreasonable risk of injury to health or the environment'' as required for an exemption under section 5(h)(4) of TSCA. Therefore, EPA is proposing to exclude such polymers from the polymer exemption at 40 CFR 723.250.

C. Proposed Implementation

EPA is proposing to delay the implementation of the final rule in order to provide current manufacturers or importers of the affected polymers who are in full compliance with the terms of the existing polymer exemption rule, additional time to come into compliance with the amendment proposed without disrupting their ability to manufacture or import those polymers.

To do this, EPA is proposing to establish an effective date for the final rule that is one year after the date of publication of the final rule. After expiration of the one year implementation period, polymers that

are subject to the final rule (including affected polymers made under the polymer exemption rule) would no longer be eligible for exemption. Therefore, a person who intends to manufacture or import polymers subject to the final rule must complete the TSCA premanufacture review process before the effective date. EPA believes that the one year period between the publication date of the final rule and the effective date of the final rule would provide adequate time for current manufacturers and importers of the polymers subject to the final rule to prepare and submit PMNs for those polymers and for EPA to review the PMNs.

As an alternative to the one year effective date, EPA could establish an effective date of the final rule as 30 days after its publication in the **Federal Register**, the minimum required by section 553(c) of the Administrative Procedure Act, but provide an extended compliance date for those who, prior to the effective date of the final rule, had already initiated the manufacture or import of polymers that are subject to the final rule. Under this approach, the TSCA section 5(a)(1)(A) requirement to submit a PMN for a new chemical substance would be re-established with respect to polymers that are subject to the final rule, beginning 30 days after publication of the final rule in the **Federal Register**. However, those who are manufacturing or importing polymers under the existing exemption would have one year from the effective date to complete the PMN process. EPA is specifically requesting comment on this or other alternatives for implementing the final rule that would achieve the purposes of TSCA section 5 without disrupting ongoing manufacture or import of currently-exempt polymers.

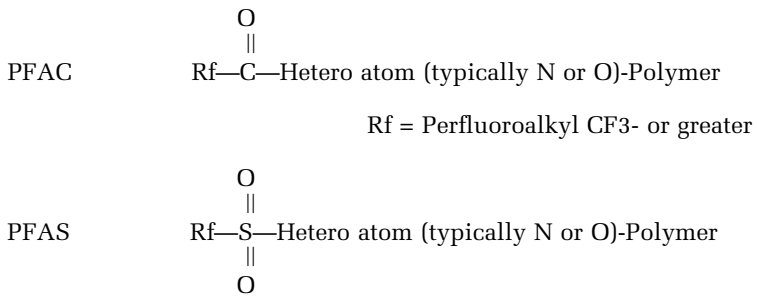
IV. Proposed Rule

A. History Subsequent to the 1995 Amendment to the Polymer Exemption Rule

The 1995 amendments to the polymer exemption rule expanded the polymer exemption to include polymers made from reactants that contain certain halogen atoms, including fluorine. The best available information in 1995 indicated that most halogen containing compounds, including unreactive polymers containing PFAS and PFAC chemicals, were chemically and environmentally stable and would not present an unreasonable risk to human health and the environment. In 1999, however, the 3M Company (3M) provided the Agency with preliminary reports that indicated widespread distribution of PFOS in humans and animals (Refs. 12, 13, and 14). In addition, on May 16, 2000, 3M announced that it would phase out perfluorooctanyl chemistry in light of the persistence of certain fluorochemicals and their detection at extremely low levels in the blood of the general population and animals. 3M indicated that production of these chemicals would be substantially discontinued by the end of 2000 (Ref. 15). Based on this information from 3M, EPA began to investigate potential risks from PFOS and other perfluorinated chemicals, as well as polymers containing these chemicals. EPA believes that polymers containing PFAS or PFAC chemicals may degrade, releasing these chemicals into the environment where they are expected to persist. The number of carbon atoms on the PFAS or PFAC molecule, whether as a single compound, or as a component of a polymer, may influence bioaccumulation potential and toxicity. EPA also believes that polymers containing fluorotelomers or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule may degrade, releasing these substances into the environment where they may further degrade into PFAS or PFAC.

B. Defining Polymers That Are Subject to This Proposed Rule

1. *Polymers containing PFAS or PFAC.* This proposed rule applies to a large group of polymers containing one or more fully fluorinated alkyl sulfonate or carboxylate groups. None of these polymers occur naturally. Such polymers are considered ''new chemical substances'' under TSCA if they have not been included in the Inventory of Chemical Substances compiled and published under section 8(b) of TSCA (15 U.S.C. 2607(b)). For a list of examples of the Ninth Collective Index of chemical names and CAS Registry Numbers (CASRN) of chemical substances used to make polymers that are subject to this proposed rule amendment, see Ref.1. EPA has concerns for the perfluorinated carbon atoms in the Rf substituent, below, when that Rf unit is associated with the polymer through the carbonyl (PFAC) or sulfonyl (PFAS) group. How these materials are incorporated into the polymer is immaterial (they may be counter ions, terminal/end capping agents, or part of the polymer backbone).



This proposed rule would specifically exclude from the polymer exemption at 40 CFR 723.250 polymers that contain any PFAS or PFAC group consisting of a CF3- or longer chain length. EPA has increasing concerns as the number of carbon atoms that are perfluorinated in any individual Rf substituent increases. PFOA (perfluorooctanoate) is a PFAC (see top structure) which has 7 carbon atoms in the Rf moiety (CAS nomenclature rules count the carbonyl carbon atom as the eighth carbon for naming purposes, hence the octanoate terminology). PFOS (perfluorooctane sulfonate) is a PFAS (see bottom structure) which has 8 carbon atoms in the Rf moiety. Generally, the longer the chain of perfluorinated C atoms, the greater the persistence and retention time in the body; furthermore, the C8 chain length has been associated with adverse health effects.

Most of the toxicity data currently available on PFAS and PFAC chemicals pertain to the PFOS potassium salt (PFOSK) and the PFOA ammonium salt

(APFO). There is some evidence that PFAS/PFAC moieties with longer carbon chains may present greater concerns than PFAS/PFAC moieties with shorter carbon chains (Refs. 5, 6, and 7). However, EPA has insufficient information at this time to determine a limit for which shorter chain lengths ''will not present an unreasonable risk to human health or the environment.''

2. *Polymers containing fluorotelomers or other perfluoroalkyl moieties.* EPA is also proposing to exclude polymers that contain fluorotelomers, or that contain perfluoroalkyl moieties of a CF3- or longer chain length that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.

Fluorotelomers: One method that is commonly used to incorporate perfluorinated compounds into polymers is to use fluorotelomers, such as perfluoroalkyl ethanol. Telomerization is the reaction of a telogen with a polymerizable ethylenic compound to form low molecular weight polymeric compounds, commonly referred to as ''telomers.'' For example, the reaction of pentafluoroethyl iodide (a telogen) with tetrafluoroethylene forms a fluorotelomer iodide intermediate which is then reacted with ethylene and converted into perfluoroalkyl ethanol. This chemical can be further reacted to form a variety of useful materials which may subsequently be incorporated into the polymer (Ref. 16). The fluorochemical group formed by the telomerization process is predominantly straight chain, and depending on the telogen used produces a product having an even number of carbon atoms. However, the chain length of the fluorotelomer varies widely. A representative structure for these compounds is:

F-(CF2-CF2)x-Anything (often CH2-CH2-O-Polymer) $x \geq 1$

Other perfluoroalkyl moieties: Perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule can be attached to the polymers using conventional chemical reactions. A representative structure for these compounds is:

F-(CF2)x-(C,S)-Polymer $x \geq 1$

C. Concerns With Respect to Polymers Containing PFAS, PFAC, Fluorotelomers, or Other Perfluoroalkyl Moieties

EPA is proposing to amend the polymer exemption rule because the Agency has received information which suggests that polymers containing certain perfluoroalkyl moieties consisting of a CF3- or longer chain length (i.e., PFAS, PFAC, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule) may degrade and release fluorochemical residual compounds into the environment. Once released, these substances are expected to persist in the environment, may bioaccumulate, and may be highly toxic. The evidence suggests that fluorotelomers and perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule do persist in the environment, and that they can be metabolically transformed into PFAC, which bioaccumulates and is toxic. The following sections will summarize the concerns the Agency has for PFAS, PFAC, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.

D. Summary of Data on PFAS and PFAC

1. *Use and production volume data for PFOS.* PFAS chemicals have been in commercial use since the 1950's. There were three main categories of use: Surface treatments, paper protectors (including food contact papers), and performance chemicals (Ref. 3). The various surface treatment and paper protection uses constituted the largest volume of PFOS production and therefore, were believed to present the greatest source of widespread human and environmental exposure to PFOS.

Until the year 2000, 3M was the largest manufacturer of PFAS chemicals in the United States. On May 16, 2000, following discussions with the Agency, 3M issued a press release announcing that it would discontinue the production of perfluorooctanyl chemicals used in the manufacture of some of its repellent and surfactant products. In its statement, 3M committed to ''substantially phase out production'' by the end of calendar year 2000 (Ref. 17). In subsequent correspondence with the Agency, 3M provided a schedule documenting its complete plan for discontinuing all manufacture of specific PFOS and related chemicals for most surface treatment and paper protection uses (including food contact uses regulated by the Food and Drug Administration (FDA)) by the end of 2000, and for discontinuing all manufacture for any uses by the end of 2002 (Ref. 15).

The 3M phase-out plan eliminated many of these chemicals from further distribution in commerce. The largest production volume (both initially produced and removed from commerce) was for polymers. Other PFAS chemicals, however, continue to be manufactured or imported by other companies and may be of concern. EPA followed the voluntary 3M phase-out with the promulgation of a SNUR under TSCA section 5. The SNUR limits any future manufacture or importation of PFOS before EPA has had an opportunity to review activities and risks associated with the proposed manufacture or importation (Ref. 17a).

PFAS chemicals produced for surface treatment applications provide soil, oil, and water resistance to personal apparel and home furnishings. Specific applications in this use category include protection of apparel and leather, fabric/upholstery, and carpeting. Applications are undertaken in industrial settings such as textile mills, leather tanneries, finishers, fiber producers, and carpet manufacturers. PFAS chemicals are also used in aftermarket treatment of apparel and leather, upholstery, carpet, and automobile interiors, with the application performed by both the general public and professional applicators (Ref. 3). In 2000, the domestic production volume of PFAS chemicals for this use category was estimated to be 2.4 million pounds (Ref. 15).

PFAS chemicals produced for paper protection applications provide grease, oil, and water resistance to paper and paperboard as part of a sizing agent formulation. Specific applications in this use category include food contact applications (plates, food containers, bags, and wraps) regulated by the FDA under 21 CFR 176.170, as well as non-food contact applications (folding cartons, containers, carbonless forms, and masking papers). The application of sizing agents is undertaken mainly by paper mills and, to some extent, converters, who manufacture bags, wraps, and other products from paper and paperboard (Ref. 3). In 2000, the domestic production volume of PFOS chemicals for this use category was estimated to be 2.7 million pounds (Ref. 15).

PFAS chemicals in the performance chemicals category are used in a wide variety of specialized industrial, commercial, and consumer applications. Specific applications include fire fighting foams, mining and oil well surfactants, acid mist suppressants for metal plating and electronic etching baths, alkaline cleaners, floor polishes, photographic film, denture cleaners,

shampoos, chemical intermediates, coating additives, carpet spot cleaners, and as an insecticide in bait stations for ants (Ref. 3). In 2000, the domestic production volume of PFAS chemicals for this use category was estimated to be 1.5 million pounds (Ref. 15).

2. *Use and production volume data for PFOA*. The largest use for PFOA is as a chemical intermediate. Its salts are used in emulsifier and surfactant applications, including as a fluoropolymer polymerization aid in the production of fluoropolymers and fluoroelastomers. This proposed rule does not require PMN notification for polymers where APFO is used exclusively as a polymerization aid and is not incorporated into the polymer structure.

Until the year 2000, 3M was also the largest manufacturer and importer of PFOA and its salts in the United States. Subsequent to its May 16, 2000 announcement (see Unit IV.D.1.), 3M provided clarification that this announcement included PFOA as well as PFOS, indicating that it was phasing out certain FLUORAD Brand specialty materials that contained PFOA and its salts (Ref. 4). Following the phase-out by 3M, DuPont began to manufacture PFOA in the United States, and is currently the sole U.S. producer (Ref. 18). The Fluoropolymer Manufacturers Group has stated that DuPont will not sell APFO outside the fluoropolymer industry (Ref. 18a).

The four principal use categories for salts of PFOA include uses as:

- A fluoropolymer polymerization aid in the industrial synthesis of fluoropolymers and fluoroelastomers such as polytetrafluoroethylene (PTFE) and polyvinylidene fluoride (PVDF), with a variety of industrial and consumer uses (Refs. 19, 20, and 21).
- A post-polymerization processing aid to stabilize suspensions of fluoropolymers and fluoroelastomers prior to further industrial processing (Ref. 19).
- A processing aid for factory-applied fluoropolymer coatings on architectural fabrics, metal surfaces, and fabricated or molded parts (Ref. 20).
- An extraction agent in ion-pair reversed-phased liquid chromatography (Ref. 22).

PTFE and PVDF account for the largest volumes of fluoropolymer production (Ref. 23). PFOA is also used in other fluoropolymer and fluoroelastomer manufacturing and processing. In addition, 3M used PFOA in the industrial synthesis of a fluoroacrylic ester, which is used in an industrial coating application (Ref. 19).

The fluoropolymers manufactured with PFOA as a polymerization aid are used to produce a wide variety of industrial and consumer products. These products include: High performance lubricants; personal care products; architectural fabrics; films; cookware, breathable membranes for apparel; protective industrial coatings; wire and cable insulation; semiconductor chip manufacturing equipment; pump seals, liners and packing; medical tubing; aerospace devices; automotive hoses and tubing; and, a wide variety of electronic products (Ref. 24). The fluoropolymer industry has informed EPA that it does not intend to incorporate PFOA into the polymer structure for these uses (Ref. 24). However, if PFOA were to be incorporated into the structure of a polymer, this proposed rule amendment would require PMN notification.

3. *Exposure data for PFOS and PFOA*. PFOS and PFOA have been detected at low levels in the blood of humans and wildlife throughout the United States, providing clear evidence of widespread exposure to these chemicals (Refs. 4 and 25). Studies are underway to determine the sources of exposure for PFOS and PFOA. Several potential pathways may account for the widespread exposure to these chemicals.

For PFOS, these pathways may have included:

- Dietary intake from the consumption of food wrapped in paper containing PFOS derivatives.
- Inhalation from aerosol applications of PFOS-containing consumer products.
- Inhalation, dietary, or dermal exposures resulting from manufacturing, as well as industrial, commercial, and consumer use and disposal of PFOS-containing chemicals and products.

Because PFOA is not used directly in consumer products, its exposure pathways may result from manufacturing and industrial uses and disposal of PFOA-derived chemicals and products, typically used as processing aids for fluoropolymer manufacturing. EPA has data indicating that PFOA is released into the environment from industrial discharges to air, water, and land (Refs. 19, 20, 26). Canadian research has found that thermolysis of fluoropolymers, e.g., PTFE, can liberate small quantities of perfluorocarboxylic acids, which include PFOA (Ref. 27). However, the extreme conditions needed to produce these PFAC products make this source of PFAC an improbable contributor to the environmental availability of PFAC.

Data indicate that PFOA may also be produced by the degradation or metabolism of fluorotelomer alcohols (Refs. 8 and 48), suggesting exposures to PFOA may result from releases from fluorotelomer manufacturing and processing, and from the use and disposal of fluorotelomer-containing products.

4. *Environmental fate of PFAS and PFAC*. Little information is available on the fate of high molecular weight PFAS and PFAC polymers in the environment. Based on their chemical structures they are expected to be stable, with many derivatives being non-volatile, but few studies are available to allow confirmation.

EPA cannot currently conduct a definitive assessment of the environmental fate and transport of PFOS- and PFOA-derived chemicals. Conventional modeling programs are based on ''traditional'' organic compounds which contain carbon and hydrogen. These models are not designed to account for the physical-chemical properties and environmental behavior of perfluorinated compounds. Therefore, these models provide results that are not representative of perfluorinated chemicals.

PFOS and PFOA may be expected to be similar in their resistance to hydrolysis, biodegradation and photolysis, however, they may have differences in adsorption/desorption, transport, distribution and bioaccumulation. Based on available data, PFOS and PFOA are expected to persist in the environment.

PFOS and PFOA are stable to hydrolysis. The 3M Environmental Laboratory (Refs. 28 and 29) performed studies of the hydrolysis of PFOS and PFOA. The study procedures were based on EPA's OPPTS Harmonized Test Guideline 835.2110. Results were based on the observed concentrations of PFOS and PFOA in buffered aqueous solutions as a function of time. Based on these studies, it was estimated that the hydrolytic half-lives of PFOS and PFOA at 25°C are greater than 41 and 92 years, respectively.

PFOS and PFOA do not measurably biodegrade in the environment. The biodegradation of PFOA was investigated using acclimated sludge microorganisms and a shake culture study modeled after the Soap and Detergent Association's presumptive test for degradation (Ref. 30). Neither thin-layer nor liquid chromatography detected the presence of any metabolic products over the course of 2 ½ months, indicating that PFOA does not readily undergo biodegradation. In a related study PFOA was not measurably degraded in activated sludge inoculum (Ref. 31). Several other studies conducted between 1977 to 1987 did

not show PFOA biodegradation either; however, the results are questionable due to methodological problems (Refs. 32, 33, 34, and 35). Similar results have been reported for PFOS. No measurable biodegradation of PFOS in activated sludge, sediment, aerobic soil, anaerobic sludge, or pure culture studies were found (Ref. 36).

PFOS and PFOA appear to be stable to photolysis. Direct photolysis of PFOA was examined by Todd (Ref. 37) and photodegradation was not observed. Hatfield (Ref. 38) studied both direct and indirect photolysis utilizing techniques based on EPA and the Organization for Economic Cooperation and Development (OECD) guidance documents. There was no conclusive evidence of direct or indirect photolysis. A PFOA half-life in the environment was estimated to be greater than 349 days.

PFOA appears to be mobile in soils, and there is conflicting data on the mobility of PFOS in soils. The adsorption-desorption of PFOA and PFOS were studied by 3M using 14C-labeled test chemicals in distilled water with a Brill sandy loam soil. The study reported a soil adsorption coefficient (K_{oc}) of 14 for PFOA, and a K_{oc} of 45 for PFOS, indicating that both PFOS and PFOA have high mobility in Brill sandy loam soil. The K_{oc} value for PFOA, and possibly PFOS, however, is questionable due to the lack of accurate information on the purity of the 14C-labeled test substance (Refs. 39 and 40). In another 3M study using OECD method 106 to measure the sorption of PFOS (Ref. 41), it was reported that the chemical strongly adsorbed to all of the soil/sediment/sludge matrices tested. The test substance, once adsorbed, did not desorb readily, even when extracted with an organic solvent. K_{oc} values more than 3 orders of magnitude higher than those reported by Welsh were observed. DuPont evaluated PFOA in a soil absorption/desorption study and found that the average absorption of PFOA in various soils tested at 1:1 soil:solution ratio ranged from 40.8% to 81.8%, and the highest average desorption coefficient (K_d) value, 22.5 mL/g, was found in sludge (Ref. 42). The data from the 3M and DuPont studies, while of high quality, are of limited utility in understanding the movement of PFOA released to soil. Batch sorption studies, because of their limited nature, do not provide all the information needed to understand the behavior of PFOA in the environment. The data raised additional questions, and are not sufficient to understand the behavior of PFOA in soil to allow EPA to determine whether soil is an important pathway for human and environmental exposure to PFOA.

Both substances have low vapor pressures and Henry's Law constants (HLCs), which suggest low potential for volatilization from water. The estimated HLCs for PFOS are 1.4 E-7, 2.4 E-8, 4.7 E-9 , 3 E-9 atm-m^3/mole (atmospheres per meter cubed per mole), utilizing the vapor pressure of 3.3 E-9 atm at 20°C and water solubility values of 12, 25, 370, and 570 (mg/L) in unfiltered seawater, filtered seawater, fresh water and pure water, respectively. For PFOA, the estimated HLCs is < 3.8 x 10E-10 atm-m^3/mole based on a vapor pressure of 9.1 E-8 atm and > 100 g/L solubility in water.

Even though PFOS and PFOA have relatively low vapor pressures, it is possible that they can be adsorbed on suspended particles. This is because PFOS and PFOA are considered semi-volatile organic compounds, i.e., substances with vapor pressures between about 10 E-4 to 10 E-11 atm at ambient temperatures (Ref. 43). The potential adsorption of PFOS and PFOA onto particulate matter might also create an exposure pathway.

EPA believes that PFAS and PFAC chemicals may bioaccumulate, but is uncertain as to the mechanism. Three studies have been conducted that attempted to determine the bioaccumulation potential of PFOS and PFOA. In the first study using the fathead minnow, the calculated bioconcentration factor (BCF) was 1.8 for APFO (Ref. 46). However, questions were raised about the analytical techniques, high test chemical concentration and short test duration of the study. In a Japanese study using carp, the bioaccumulation potential of PFOA was low, with apparent bioaccumulation factors ranging from 3.1–9.1 (Ref. 45). In the final study using bluegill sunfish from the 3M Decatur plant, no fluorochemicals were detected in the river water-exposed fish (Ref. 44). However, interpretation of the study was problematic. For instance, effluent concentrations of subject fluorochemicals were not characterized; the protocol for fish exposure was not found; there was no information on the Tennessee river water or effluent used, whether there was an opportunity for depuration of the fish prior to sacrifice, or the cause of death for the 12 dead fish; and the study did not differentiate between bioaccumulation of the test compound and sorption onto the fish surface. These studies in fish on the bioaccumulation of these chemicals suggest relatively low bioaccumulation potential. However, the detection of PFOS and to a lesser extent PFOA in wild animals indicates the possibility of accumulation of the chemicals in biota. PFOS and PFOA appear to have higher bioaccumulation factors than other PFAS and PFAC chemicals. Thus, the widespread presence of these chemicals in living organisms also suggests that PFOS and PFOA may bioaccumulate.

5. *Health effects of PFAS and PFAC.* Most of the Agency's concerns for the health effects of polymers subject to this proposed rule focus on the perfluoroalkyl moiety, which may be released into the environment. The Agency's non-confidential data for health effects of PFAS and PFAC chemicals are on PFOS (as PFOSK) and PFOA (as APFO). EPA has insufficient evidence to determine that polymers containing PFAS or PFAC with any number of carbons on the perfluoroalkyl moiety ''will not present an unreasonable risk to human health or the environment'' and is proposing to exclude polymers that contain these chemicals from eligibility for the exemption. Below is a summary of the results of toxicological and epidemiological studies on PFOS and PFOA.

i. *Health effects of PFOS.* All of the data summarized in Unit IV.D.5.i., as well as the primary references, are detailed in the OECD ''Hazard Assessment of Perfluorooctane sulfonate (PFOS) and its Salts'' (Ref. 25).

Toxicology studies show that PFOS is well absorbed orally and distributes primarily in the serum and liver. PFOS can also be formed as a metabolite of other perfluorinated sulfonates. It does not appear to be further metabolized. Elimination from the body is slow and occurs via both urine and feces. The elimination half-life for an oral dose is 7.5 days in adult rats and approximately 200 days in Cynomolgus monkeys. In humans, the mean elimination half-life of PFOS reported in 9 retired workers appears to be considerably longer, on the order of years (mean = 8.67 years; range = 2.29–21.3 years; standard deviation = 6.12).

PFOS has shown moderate acute toxicity by the oral route with a combined (male and female) rat LD_{50} of 251 mg/kg. The LD_{50} was 233 mg/kg in males and 271 mg/kg in females. A 1-hour LC_{50} of 5.2 mg/L in rats has been reported. PFOS was found to be mildly irritating to the eyes and non-irritating to the skin of rabbits. PFOS does not induce gene mutation in selected strains of *Salmonella typhimurium* or *Escherichia coli* nor does it induce chromosomal aberrations in human lymphocytes in culture when tested *in vitro* either with or without metabolic activation. PFOS does not induce

unscheduled DNA synthesis in primary cultures of rat hepatocytes and is negative when tested *in vivo* in a mouse bone marrow micronucleus assay.

Three 90-day subchronic studies of PFOS have been conducted. One was a dietary study in rats and two were gavage studies in rhesus monkeys. In addition, a four week and a 26 week capsule study in Cynomolgus monkeys and a two-year cancer bioassay in rats, have been conducted . The primary health effects of concern, based on available data, are liver effects, developmental effects, and mortality. Mortality was associated with a steep dose-response across all ages and species.

In the rat subchronic study, CD rats, 5/sex/group, were administered dietary levels of PFOS at 0, 30, 100, 300, 1,000 or 3,000 parts per million (ppm) for 90 days. All of the rats in the 300, 1,000 and 3,000 ppm groups died. Before death, the rats in all groups showed signs of toxicity including emaciation, convulsions following handling, hunched back, red material around the eyes, yellow material around the anogenital region, increased sensitivity to external stimuli, reduced activity, and moist red material around the mouth or nose. Mean body weight and average food consumption were reduced in all groups. Animals in the 100 ppm and 30 ppm dose groups also showed signs of gastrointestinal effects and hematological abnormalities. At necropsy, treatment related gross lesions were present in all treated groups and included varying degrees of discoloration and/or enlargement of the liver and discoloration of the glandular mucosa of the stomach. Histologic examination also showed lesions in all treated groups.

Two 90-day rhesus monkey studies were performed. In the first study, PFOS was administered to male and female rhesus monkeys at doses of 0, 10, 30, 100, or 300 mg/kg/day in distilled water by gavage for 90 days. In the second study, PFOS was administered at doses of 0, 0.5, 1.5, or 4.5 mg/kg/day also in distilled water by gavage for 90 days. None of the monkeys in the first study survived treatment. In the second study, all monkeys in the 4.5 mg/kg/day group died or were sacrificed *in extremis*. Before death all monkeys suffered from similar signs of toxicity including decreased activity, emesis with some diarrhea, body stiffening, general body trembling, twitching, weakness, convulsions, and prostration. At necropsy, several of the monkeys in the 100 and 300 mg/kg/day groups had a yellowish-brown discoloration of the liver; histologic examination showed no microscopic lesions. Congestion, hemorrhage, and lipid depletion of the adrenal cortex was noted in all treated groups in the first study.

In the second study, animals in the 30 mg/kg/day dose group had reduced mean body weight, significant reduction in serum cholesterol and a 50% reduction in serum alkaline phosphatase activity. At necropsy, all males and females had marked diffuse lipid depletion in the adrenals. One male and two females had moderate diffuse atrophy of the pancreatic exocrine cells with decreased cell size and loss of zymogen granules. Two males and one female had moderate diffuse atrophy of the serous alveolar cells characterized by decreased cell size and loss of cytoplasmic granules. Animals in the 1.5 and 0.5 mg/kg/day dose group survived to the end of the study and showed signs of decreased activity and gastrointestinal distress.

Two additional studies were conducted in Cynomolgus monkeys. In the first study, male and female Cynomologus monkeys received doses of 0, 0.02, or 2.0 mg/kg/day PFOS in capsules placed directly into the stomach for 30 days. All animals survived treatment. There were no test-related effects on clinical observations, body weight, food consumption, body temperatures, hematology, enzyme levels, cell proliferation in the liver, testes or pancreas or macroscopic or microscopic pathology findings.

In the second study, PFOS was administered to Cynomolgus monkeys by oral capsule at doses of 0, 0.03, 0.15, or 0.75 mg/kg/day for 26 weeks. Animals from the 0.15 and 0.75 mg/kg/day groups were assigned to a recovery group and were held for observation for an additional 26 weeks after treatment. Two males in the 0.75 mg/kg/day dose group did not survive the 26 weeks of treatment. The first animal died on day 155. In addition to being cold to the touch, clinical signs in the first animal included: Constricted pupils, pale gums, gastrointestinal distress, low food consumption, hypoactivity, labored respiration, dehydration, and recumbent position. An enlarged liver was detected by palpation. Cause of death was determined to be pulmonary necrosis with severe acute inflammation. The second male was sacrificed in a moribund condition on day 179. Clinical signs noted included low food consumption, excessive salivation, labored respiration, hypoactivity and ataxia. The cause of death was not determined. Males and females in the 0.75 mg/kg/day dose-group had lower total cholesterol and males and females in the 0.15 and 0.75 mg/kg/day groups had lower high density lipoprotein cholesterol during treatment. The effect on total cholesterol worsened with time. By day 182, mean total cholesterol for males and females in the high dose group were 68% and 49% lower, respectively, than levels in the control animals. Males in the high dose group also had lower total bilirubin concentrations and higher serum bile acid concentrations than males in either the control or other treatment groups. The effect on total cholesterol was reversed within 5 weeks of recovery and the effect on high density lipoprotein cholesterol was reversed within 9 weeks of recovery.

At terminal sacrifice, females in the 0.75 mg/kg/day dose-group had increased absolute liver weight, liver-to-body weight percentages, and liver-to-brain weight ratios. In males, liver-to body weight percentages were increased in the high-dose group compared to the controls. ''Mottled'' livers and centrilobular or diffuse hepatocellular hypertrophy and centrilobular or diffuse hepatocellular vacuolation were also observed in high dose males and females. No PFOS related lesions were observed either macroscopically or microscopically at recovery sacrifice indicating that the effects seen at terminal sacrifice may be reversible.

The chronic toxicity and carcinogenicity of PFOS have been studied in rats. The results of the study show that PFOS is hepatotoxic and carcinogenic, inducing tumors of the liver, and thyroid and mammary glands. In this study, groups of 40 to 70 male and female Crl:CD (SD)IGS BR rats were given PFOS in the diets at concentrations of 0, 0.5, 2, 5, or 20 ppm for 104 weeks. A recovery group was given the test material at 20 ppm for 52 weeks and was observed until death. Five animals per sex in the treatment groups were sacrificed during weeks 4, 14, and 53.

At the terminal sacrifice, the livers of animals given 5 or 20 ppm were enlarged, mottled, diffuse darkened, or focally lightened. Hepatotoxicity, characterized by significant increases in centrilobular hypertrophy, centrilobular eosinophilic hepatocytic granules, centrilobular hepatocytic pigment, or centrilobular hepatocytic vacuolation was noted in male and/or female rats given 5 or 20 ppm. A significant increase in hepatocellular centrilobular hypertrophy was also observed in mid-dose (2 ppm) male rats. For neoplastic effects, a significant positive trend was noted in the incidences of hepatocellular adenoma in male rats. A significantly increased incidence was observed for thyroid follicular cell

adenoma in the high-dose recovery group when compared to the control group.

In females, significant positive trends were observed in the incidences of hepatocellular adenoma and combined hepatocellular adenoma and carcinoma. A significant increase for combined thyroid follicular cell adenoma and carcinoma was observed in the mid-high (5.0 ppm) group as compared to the control group. Except for the high-dose group, increases in mammary tumors were observed in all treatment groups when compared to the controls.

Developmental toxicity studies on PFOS have been conducted in rats, mice and rabbits. The first study administered four groups of 22 time-mated Sprague-Dawley rats 0, 1, 5, and 10 mg/kg/day PFOS in corn oil by gavage on gestation days (GD) 6–15. Signs of maternal toxicity consisted of significant reductions in mean body weights during GD 12–20 at the high-dose group of 10 mg/kg/day. No other signs of maternal toxicity were reported. Under the conditions of the study, a no observed adverse effect level (NOAEL) of 5 mg/kg/day and a lowest observed adverse effect level (LOAEL) of 10 mg/kg/day for maternal toxicity were indicated. Developmental toxicity evident at 10 mg/kg/day consisted of reductions in the mean number of implantation sites, corpora lutea, resorption sites, and the mean numbers of viable male, female, and total fetuses, but the differences were not statistically significant. In addition, unusually high incidences of unossified, asymmetrical, bipartite, and missing sternebrae were observed in all dose groups; however, these skeletal variations were also observed in control fetuses at the same rate and therefore these effects were not considered to be treatment-related. A fetal lens finding initially described as a variety of abnormal morphological changes localized to the area of the embryonal nucleus, was later determined to be an artifact of the free-hand sectioning technique and therefore not considered to be treatment-related.

Groups of 25 pregnant Sprague-Dawley rats were administered 1, 5, and 10 mg/kg/day PFOS in corn oil by gavage on gestation days (GD) 6–15. Evidence of maternal toxicity occurred at the 5 and 10 mg/kg/day dose groups both consisted of hunched posture, anorexia, bloody vaginal discharge, uterine stains, alopecia, rough haircoat, and bloody crust. Significant decreases in mean body weight gains during GD 6–8, 6–16, and 0–20 were also observed in the 5 and 10 mg/kg/day dose groups. These reductions were considered to be treatment-related since mean body weight gains were greater than controls during the post-exposure period (GD 16–20). Significant decreases in mean total food consumption were observed on GD 17–20 in the10 mg/kg/day dose group, and on GD 7–16 and 0–20 in both the 5 and 10 mg/kg/day dose groups. The mean gravid uterine weight in the 10 mg/kg/day dose group was significantly lower when compared with controls. The mean terminal body weights minus the gravid uterine weights were lower in all treated groups, with significant decreases at 5 and 10 mg/kg/day. High-dose animals also exhibited an increased incidence in gastrointestinal lesions. No significant differences were observed in pregnancy rates, number of corpora lutea, and number and placement of implantation sites among treated and control groups. Two dams in the 10 mg/kg/day dose group were found dead on GD 17. Under the conditions of the study, a NOAEL of 1 mg/kg/day and a LOAEL of 5 mg/kg/day for maternal toxicity were indicated.

Significant decreases in mean fetal weights for both males and females were observed in the 5 and 10 mg/kg/day dose groups. Statistically significant increases in incomplete closure of the skull were observed in the low- and high-dose groups but not in the mid-dose group. Statistically significant increases in the incidences in the number of litters containing fetuses with visceral anomalies, delayed ossification, and skeletal variations were observed in the high dose group of 10 mg/kg/day. These included external and visceral anomalies of the cleft palate, subcutaneous edema, and cryptorchism as well as delays in skeletal ossification of the skull, pectoral girdle, rib cage, vertebral column, pelvic girdle, and limbs. Skeletal variations in the ribs and sternebrae were also observed. Under the conditions of the study, a NOAEL of 1 mg/kg/day and a LOAEL of 5 mg/kg/day for developmental toxicity were indicated.

In another study, Sprague-Dawley rats and CD-1 mice were administered doses of 0, 1, 5, or 10 mg/kg/day PFOS in 0.5% Tween-20 by gavage beginning on gestation day 2 and continuing until term. Half of the dams were sacrificed on gestation day 21 (rats) or gestation day 17 (mice) and the remaining dams were allowed to deliver. Preliminary results are available. In rats, there was a significant reduction in maternal body weight gain at 5 and 10 mg/kg/day. Maternal serum cholesterol and triglycerides were reduced at 10 mg/kg/day, but liver weights were comparable to control. At 10 mg/kg/day, there was a reduction in fetal body weight and an increase in cleft palate and anasarca. All pups were born alive, but within 4 to 6 hours after birth all the pups in the 10 mg/kg/day group died, and 95% of the pups in the 5 mg/kg/day group died within 24 hours. In mice, maternal body weight was unaffected and liver weights were significantly increased at 5 and 10 mg/kg/day; serum triglycerides were reduced at 5 and 10 mg/kg/day. The incidence of fetal mortality was slightly increased at 10 mg/kg/day and mean fetal body weights were comparable to control. However, neonatal body weights were reduced during the first 3 days of life. Additional studies are underway to further elucidate the dose-response relationships and to examine the mechanism for the neonatal death.

Pregnant New Zealand White rabbits, 22 per group, were administered doses of 0, 0.1, 1.0, 2.5, or 3.75 mg/kg/day PFOS in 0.5% Tween-80 by gavage on gestation days 7–20 in another study. Maternal toxicity was evident at doses of 1.0 mg/kg/day and above. One doe in the 2.5 mg/kg/day group and nine does in the 3.75 mg/kg/day aborted. There was a significant increase in the incidence of scant feces in the 3.75 mg/kg/day group. Scant feces were also noted in one and three does in the 1.0 and 2.5 mg/kg/day groups, respectively. Mean maternal body weight gains were significantly reduced in the 3.75 and 2.5 mg/kg/day group. Mean food consumption (g/kg/day) was significantly reduced in the 2.5 and 3.75 mg/kg/day dose group. The LOAEL for maternal toxicity was 1.0 mg/kg/day and the NOAEL was 0.1 mg/kg/day.

Developmental toxicity was evident at doses of 2.5 mg/kg/day and above. Mean fetal body weight (male, female, and sexes combined) was significantly reduced in the 2.5 and 3.75 mg/kg/day groups. There was also a significant reduction in the ossification of the sternum (litter averages) in the 2.5 and 3.75 mg/kg/day groups, and a significant reduction in the ossification of the hyoid (litter averages), metacarpals (litter averages), and pubis (litter and fetal averages) in the 3.75 mg/kg/day group. The LOAEL for developmental toxicity was 2.5 mg/kg/day and the NOAEL was 1.0 mg/kg/day.

In epidemiological studies, cross-sectional, occupational, and a longitudinal study did not indicate consistent associations between workers' PFOS serum levels and certain hematology and other clinical chemistry parameters. In the cross-sectional analysis, workers with the highest PFOS exposures had significantly higher serum triiodothyronine levels and significantly lower thyroid hormone binding ratio; however, hormonal

parameters were not measured longitudinally. In addition, these studies were conducted on volunteers only, female employees could not be analyzed due to the small number of women employed at these plants, different labs and analytical techniques were used to measure PFOS, and only a small number of employees were common to all of the sampling periods. In a mortality study of workers exposed to PFOS, most of the cancer types and non-malignant causes were not elevated. However, a statistically significant mortality risk of bladder cancer (SMR = 12.77, 95% CI = 2.63–37.35) was reported in 3 male employees. All of the workers had been employed at the plant for more than 20 years and all of them had worked in ''high exposure jobs'' for at least 5 years. Although it is unlikely that this effect would be due to chance or tobacco smoking, it cannot be ascertained whether fluorochemicals are responsible for the excess of bladder cancer deaths, or whether other carcinogens may be present in the workplace.

In human blood samples, PFOS has been detected in the serum of occupational and general populations in the parts per billion (ppb) to ppm range. In the United States, recent blood serum levels of PFOS in manufacturing employees have been as high as 12.83 ppm, while in the general population, pooled serum collected from the United States blood banks and commercial sources have indicated mean PFOS levels ranging from 29 to 44 ppb. Mean serum PFOS levels from individual samples in adults and children were approximately 43 ppb.

Sampling of several wildlife species from a variety of sites across the United States has shown widespread distribution of PFOS. In recent analyses, PFOS was detected in the ppb range in the plasma of several species of eagles, wild birds, and fish. PFOS has also been detected in the ppb range in the livers of unexposed rats used in toxicity studies, presumably through a dietary source (fishmeal).

Although the PFOS levels detected in the blood of the general population are low, this widespread presence, combined with the persistence, the bioaccumulative potential, and the reproductive and subchronic toxicity of the chemical, raises concerns for potential adverse effects on people and wildlife (wild mammals and birds) over time should the chemical substances continue to be produced, released, and accumulate in the environment.

ii. *Health effects of PFOA.* All of the data presented in Unit IV.D.5.ii. are detailed in an EPA hazard assessment of PFOA (Ref. 4). Primary references can be obtained from that document.

The primary health effects of concern for PFOA, based on available data, are liver toxicity and developmental toxicity. Most of the health effects data for PFOA are on the ammonium salt, APFO. Occupational data indicate that mean serum levels of PFOA in workers range from 0.84 to 6.4 ppm, with the highest reported level of 81.3 ppm. In non-occupational populations, mean pooled blood bank and commercial PFOA samples ranged from 3 to 17 ppb. The mean PFOA level in individual blood samples (in children and adults) was 5.6 ppb.

Animal studies have shown that APFO is well absorbed following oral and inhalation exposure, and to a lesser extent following dermal exposure. Rats show gender differences in the elimination of APFO. APFO distributes primarily to the liver, plasma, and kidney, and to a lesser extent, other tissues of the body including the testis and ovary. It does not partition to the lipid fraction or adipose tissue. APFO is not metabolized and there is evidence of enterohepatic circulation of the compound. Female rats appear to have a secretory mechanism that rapidly eliminates APFO; this secretory mechanism is either lacking or relatively inactive in male rats and is not found in monkeys or humans.

Epidemiological studies on the effects of PFOA in humans have been conducted on workers. Two mortality studies, as well as studies examining effects on the liver, pancreas, endocrine system, and lipid metabolism, have been conducted to date. A longitudinal study of worker surveillance data has also been conducted. A weak association with PFOA exposure and prostate cancer was reported in one study; however, this result was not observed in an update to the study in which the exposure categories were modified. A non-statistically significant increase in estradiol levels in workers with high serum PFOA levels (> 30 ppm) was also reported, but none of the other hormone levels analyzed indicated any adverse effects.

The acute oral toxicity of APFO was tested in male and female rats in three studies. Death occurred at concentrations ≥ 464 mg/kg. Abnormal findings upon necropsy (kidney, stomach, uterus) were observed at 500 mg/kg (higher concentrations were not tested). Clinical signs of toxicity observed in these three studies included: Red-stained face, stained urogenital area, wet urogenital area, hypoactivity, hunched posture, staggered gait, excessive salivation, ptosis, piloerection, decreased limb tone, ataxia, corneal opacity, and hypothermic to touch.

The acute inhalation toxicity of APFO was tested in male and female Sprague-Dawley rats, at a dose level of 18.6 mg/L (nominal concentration), and exposure duration of one hour. Signs of toxicity during and up to 14 days after the exposure period included: excessive salivation, excessive lacrimation, decreased activity, labored breathing, gasping, closed eyes, mucoid nasal discharge, irregular breathing, red nasal discharge, yellow staining of the anogenital fur, dry and moist rales, red material around the eyes, and body tremors. Upon necropsy, lung discoloration was observed in a higher than normal incidence of rats (8/10). Based on the study results, the test substance was not fatal to rats at a nominal exposure concentration of 18.6 mg/L and exposure duration of one hour.

The acute dermal toxicity of APFO was tested in male and female rabbits, at a dose level of 2,000 mg/kg, and a 24-hour exposure period. Dermal irritation consisted of slight to moderate erythema, edema, and atonia; slight desquamation; coriaceousness; and fissuring. No visible lesions were observed upon necropsy. The dermal LD_{50} in rabbits was determined to be greater than 2,000 mg/kg.

APFO did not induce mutation in either *S. typhimurium* or *E. coli* when tested either with or without mammalian activation and did not induce chromosomal aberrations in human lymphocytes also when tested with and without metabolic activation up to cytotoxic concentrations. It was recently reported that APFO did not induce gene mutation when tested with or without metabolic activation in the K-1 line of Chinese hamster ovary (CHO) cells in culture.

APFO was tested twice for its ability to induce chromosomal aberrations in CHO cells. In the first assay, APFO induced both chromosomal aberrations and polyploidy in both the presence and absence of metabolic activation. In the second assay, no significant increases in chromosomal aberrations were observed without activation. However, when tested with metabolic activation, APFO induced significant increases in chromosomal aberrations and in polyploidy.

APFO was tested in a cell transformation and cytotoxicity assay conducted in C_3H $10T_{1/2}$ mouse embryo fibroblasts. The cell transformation was determined as both colony transformation and foci transformation potential. There was no evidence of

transformation at any of the dose levels tested in either the colony or foci assay methods.

Subchronic toxicity studies have been conducted in rats, mice, and Rhesus and Cynomolgus monkeys. A range-finding and a 6-month toxicity study in Cynomolgus monkeys was recently conducted. In all species, the liver is the main target organ. In rats, males had more pronounced hepatotoxicity and histopathologic effects than females, presumably because of the gender difference in elimination of APFO. Subchronic studies in rats and mice with 28 and 90 days of exposure have demonstrated that the liver is the primary target organ and that males are far more sensitive than females due to the gender differences in elimination. In a 90-day study with rhesus monkeys, exposure to doses of 30 mg/kg/day or higher resulted in death, lipid depletion in the adrenals, hypocellularity of the bone marrow, and moderate atrophy of the lymphoid follicles in the spleen and lymph nodes. Chronic dietary exposure of rats to 300 ppm APFO (14.2 and 16.1 mg/kg/day for males and females, respectively) for 2 years resulted in increased liver and kidney weights, hematological effects, and liver lesions in males and females. In addition, testicular masses were observed in males at 300 ppm and ovarian tubular hyperplasia was observed in females after exposure to 30 ppm (1.6 mg/kg/day), the lowest dose tested.

PFOA is immunotoxic in mice. Feeding the mice a diet of 0.02% PFOA resulted in adverse effects to both the thymus and spleen. Other effects included suppression of the specific humoral immune response to horse red blood cells, and suppression of the splenic lymphocyte proliferation in response to lipopolysacccharide (LPS) and concanavalin A (ConA). Studies using transgenic mice indicated that the peroxisome proliferator-activated receptor was involved in causing the adverse effects to the immune system.

Several prenatal developmental toxicity studies of APFO, including two oral studies in rats, one oral study in rabbits, and one inhalation study in rats, have been conducted. In one study, time-mated Sprague-Dawley rats (22 per group) were administered doses of 0, 0.05, 1.5, 5, and 150 mg/kg/day APFO in distilled water by gavage on gestation days (GD) 6–15. Signs of maternal toxicity consisted of statistically significant reductions in mean maternal body weights at the high-dose group of 150 mg/kg/day. Other signs of toxicity that occurred only at the high dose group included ataxia and death in three rat dams. No other effects were reported. Administration of APFO during gestation did not appear to affect the ovaries or reproductive tract of the dams. Under the conditions of the study, a NOAEL of 5 mg/kg/day and a LOAEL of 150 mg/kg/day for maternal toxicity were indicated. No significant differences between treated and control groups were noted for developmental parameters. A fetal lens finding initially described as a variety of abnormal morphological changes localized to the area of the embryonal nucleus, was later determined to be an artifact of the free-hand sectioning technique and therefore not considered to be treatment-related. Under the conditions of the study, a NOAEL for developmental toxicity of 150 mg/kg/day was indicated.

Another developmental study was also conducted on APFO. The study design consisted of an inhalation and an oral portion, each with two trials or experiments. In the first trial the dams were sacrificed on GD 21; while in the second trial, the dams were allowed to litter and the pups were sacrificed on day 35-post partum. For the inhalation portion of the study, the two trials consisted of 12 pregnant Sprague-Dawley rats per group exposed to 0, 0.1, 1, 10, and 25 mg/m^3 APFO for 6 hours/day, on GD 6–15. In the oral portion of the study, 25 and 12 Sprague-Dawley rats for the first and second trials, respectively, were administered 0 and 100 mg/kg/day APFO in corn oil by gavage on GD 6–15.

In trial one of the inhalation study, treatment-related clinical signs of maternal toxicity occurred at 10 and 25 mg/m^3 and consisted of wet abdomens, chromodacryorrhea, chromorhinorrhea, a general unkempt appearance, and lethargy in four dams at the end of the exposure period (high-concentration group only). Three out of 12 dams died during treatment at 25 mg/m^3 (on GD 12, 13, and 17). Food consumption was significantly reduced at both 10 and 25 mg/m^3. Significant reductions in body weight were also observed at these concentrations, with statistical significance at the high-concentration only. Likewise, statistically significant increases in mean liver weights were seen at the high-concentration group. The NOAEL and LOAEL for maternal toxicity were 1 and 10 mg/m^3, respectively. Similar effects were seen in trial two and the NOAEL and LOAEL for maternal toxicity were the same in both trials.

No effects were observed on the maintenance of pregnancy or the incidence of resorptions. Mean fetal body weights were significantly decreased in the 25 mg/m^3 groups and in the control group pair-fed 25 mg/m^3. However, interpretation of the decreased fetal body weight is difficult given the high incidence of mortality in the dams. Under EPA guidance, data at doses exceeding 10% mortality are generally discounted. Under the conditions of the study, a NOAEL and LOAEL for developmental toxicity of 10 and 25 mg/m^3, respectively, were indicated. Similar effects were seen in trial two and the same NOAEL and LOAEL were noted.

In trial one of the oral study, three out of 25 dams died during treatment of 100 mg/kg APFO during gestation (one death on GD 11; two on GD 12). Clinical signs of maternal toxicity in the dams that died were similar to those seen with inhalation exposure. Food consumption and body weights were reduced in treated animals compared to controls. No adverse signs of toxicity were noted for any of the reproductive parameters such as maintenance of pregnancy or incidence of resorptions. Likewise, no significant differences between treated and control groups were noted for fetal weights, or in the incidences of malformations and variations; nor were there any effects noted following microscopic examination of the eyes. In trial two of the oral study, similar observations for clinical signs were noted for the dams as in trial one. Likewise, no adverse effects on reproductive performance or in any of the fetal observations were noted.

An oral two-generation reproductive toxicity study was conducted on APFO. Five groups of 30 Sprague-Dawley rats per sex per dose group were administered APFO by gavage at doses of 0, 1, 3, 10, and 30 mg/kg/day six weeks prior to and during mating. Treatment of the F0 male rats continued until mating was confirmed, and treatment of the F0 female rats continued throughout gestation, parturition, and lactation.

At necropsy, none of the sperm parameters evaluated (sperm number, motility, or morphology) were affected by treatment at any dose level. One F0 male rat in the 30 mg/kg/day dose group was sacrificed on day 45 of the study due to adverse clinical signs (emaciation, cold-to-touch, and decreased motor activity). Necroscopic examination in that animal revealed a pale and tan liver, and red testes. All other F0 generation male rats survived to scheduled sacrifice. Statistically significant increases in clinical signs were also observed in male rats in the high-dose group that included dehydration, urine-stained abdominal fur, and ungroomed coat. No treatment-related effects were reported at any dose

level for any of the mating and fertility parameters assessed. At necropsy, none of the sperm parameters evaluated (sperm number, motility, or morphology) were affected by treatment at any dose level.

At necropsy, statistically significant reductions in terminal body weights were seen at 3, 10, and 30 mg/kg/day. Absolute weights of the left and right epididymides, left cauda epididymis, seminal vesicles (with and without fluid), prostate, pituitary, left and right adrenals, spleen, and thymus were also significantly reduced at 30 mg/kg/day. The absolute weight of the seminal vesicles without fluid was significantly reduced in the 10 mg/kg/day dose group. The absolute weight of the liver was significantly increased in all dose-groups. Kidney weights were significantly increased in the 1, 3, and 10 mg/kg/day dose groups, but significantly decreased in the 30 mg/kg/day group. All organ weight-to-terminal body weight and ratios were significantly increased in all treated groups. Organ weight-to-brain weight ratios were significantly reduced for some organs at the high dose group, and significantly increased for other organs among all treated groups.

No treatment-related effects were seen at necropsy or upon microscopic examination of the reproductive organs, with the exception of increased thickness and prominence of the zona glomerulosa and vacuolation of the cells of the adrenal cortex in the 10 and 30 mg/kg/day dose groups. No treatment-related deaths or adverse clinical signs were reported in parental females at any dose level. No treatment-related effects were reported for body weights, body weight gains, and absolute and relative food consumption values.

There were no treatment-related effects on estrous cyclicity, mating or fertility parameters. None of the natural delivery and litter observations were affected by treatment. Necropsy and histopathological evaluation were also unremarkable. Terminal body weights, organ weights, and organ-to-terminal body weight ratios were comparable to control values for all treated groups, except for kidney and liver weights. The weights of the left and right kidney, and the ratios of these organ weights-to-terminal body weight and of the left kidney weight-to-brain weight were significantly reduced at the highest dose of 30 mg/kg/day. The ratio of liver weights-to-terminal body weight was also significantly reduced at 3 and 10 mg/kg/day.

No effects were reported at any dose level for the viability and lactation indices of F1 pups. No differences between treated and control groups were noted for the numbers of pups surviving per litter, the percentage of male pups, litter size and average pup body weight per litter at birth. Pup body weight on a per litter basis (sexes combined) was reduced in the 30 mg/kg/day group throughout lactation, and statistical significance was achieved on days 1, 5, and 8.

At 30 mg/kg/day, one pup from one dam died prior to weaning on lactation day 1 (LD1). Additionally, on lactation days 6 and 8, statistically significant increases in the numbers of pups found dead were observed at 3 and 30 mg/kg/day. According to the study authors, this was not considered to be treatment related because they did not occur in a dose-related manner and did not appear to affect any other measures of pup viability including numbers of surviving pups per litter and live litter size at weighing. An independent statistical analysis was conducted by EPA. No significant differences were observed between dose groups and the response did not have any trend in dose.

Of the pups necropsied at weaning, no statistically significant, treatment-related differences were observed for the weights of the brain, spleen, and thymus and the ratios of these organ weights to the terminal body weight and brain weight.

No treatment-related adverse clinical signs were observed at any dose level in F2 generation offspring. No treatment-related adverse clinical signs were observed at any dose level. Likewise, no treatment-related effects were reported following necroscopic examination, with the exception of no milk in the stomach of the pups that were found dead. The numbers of pups found either dead or stillborn did not show a dose-response (3/28, 6/28, 10/28, 10/28, and 6/28 in 0, 1, 3, 10, and 30 mg/kg/day dose groups, respectively) and therefore were unlikely related to treatment.

No effects were reported at any dose level for the viability and lactation indices. No differences between treated and control groups were noted for the numbers of pups surviving per litter, the percentage of male pups, litter size, and average pup body weight per litter when measured on LDs 1, 5, 8, 15, or 22. Anogenital distances measured for F2 male and female pups on LDs 1 and 22 were also comparable among the five dosage groups and did not differ significantly. Likewise, no treatment-related effects were reported following necroscopic examination, with the exception of no milk in the stomach of the pups that were found dead. The numbers of pups found either dead or stillborn did not show a dose-response (3/28, 6/28, 10/28, 10/28, and 6/28 in 0, 1, 3, 10, and 30 mg/kg/day dose groups, respectively) and therefore were unlikely related to treatment.

No effects were reported at any dose level for the viability and lactation indices. No differences between treated and control groups were noted for the numbers of pups surviving per litter, the percentage of male pups, litter size, and average pup body weight per litter when measured. Statistically significant increases ($p \leq 0.01$) in the number of pups found dead were observed on lactation day 1 in the 3 and 10 mg/kg/day groups. According to the study authors, this was not considered to be treatment related because they did not occur in a dose-related manner and did not appear to affect any other measures of pup viability including numbers of surviving pups per litter and live litter size at weighing. An independent statistical analysis was conducted by EPA. No significant differences were observed between dose groups and the response did not have any trend in dose. Terminal body weights in F2 pups were not significantly different from controls. Absolute weights of the brain, spleen, and thymus and the ratios of these organ weights-to-terminal body weight and to brain weight were also comparable among treated and control groups.

In summary, under the conditions of the study, the LOAEL for F0 parental males is considered to be 1 mg/kg/day, the lowest dose tested, based on significant increases in the liver and kidney weights-to-terminal body weight and to brain weight ratios. A NOAEL for the F0 parental males could not be determined since treatment-related effects were seen at all doses tested. The NOAEL and LOAEL for F0 parental females are considered to be 10 and 30 mg/kg/day, respectively, based on significant reductions in kidney weight and kidney weight-to-terminal body weight and to brain weight ratios observed at the highest dose.

The LOAEL for F1 generation males is considered to be 1 mg/kg/day, based on significant decreases in body weights and body weight gains, and in terminal body weights; and significant changes in absolute liver and spleen weights and in the ratios of liver, kidney, and spleen weights-to-brain weights; and based on significant, dose-related reductions in body weights and body weight gains observed prior to and during cohabitation and during the entire dosing period. A NOAEL for the F1 males could not be determined since treatment-related effects were seen at all doses tested.

The NOAEL and LOAEL for F1 generation females are considered to be

10 and 30 mg/kg/day, respectively, based on statistically significant increases in postweaning mortality, delays in sexual maturation (time to vaginal patency), decreases in body weight and body weight gains, and decreases in absolute food consumption, all observed at the highest dose tested. The NOAEL for the F2 generation offspring was considered to be 30 mg/kg/day. No treatment-related effects were observed at any doses tested in the study. However, it should be noted that the F2 pups were sacrificed at weaning, and thus it was not possible to ascertain the potential post-weaning effects that were noted in the F1 generation.

Carcinogenicity studies in CD rats show that APFO is weakly carcinogenic, inducing Leydig cell tumors in the male rats and mammary tumors in the females. The compound has also been reported to be carcinogenic to the liver and pancreas of male CD rats. The mechanism(s) of APFO tumorigenesis is not clearly understood. APFO is not mutagenic. Available data indicate that the induction of tumors by APFO is due to a non-genotoxic mechanism, involving activation of receptors and perturbations of the endocrine system. There is sufficient evidence to suggest that APFO is a PPARα-agonist and that the liver carcinogenicity/toxicity of APFO is mediated by binding to PPARα in the liver. The Agency is currently examining the scientific knowledge associated with PPARα-agonist-induced liver tumors in rodents and the relevance to humans. Available data suggest that the induction of Leydig cell tumors (LCT) and mammary gland neoplasms by APFO may be due to hormonal imbalance resulting from activation of the PPARα and induction of the cytochrome P450 enzyme, aromatase. Preliminary data suggest that the pancreatic acinar cell tumors are related to an increase in serum level of the growth factor, cholecystokinin.

There are limited data on PFOA serum levels in workers and the general population. Occupational data from plants in the United States and Belgium that manufacture or use PFOA indicate that mean serum levels in workers range from 0.84 to 6.4 ppm. In non-occupational populations, serum PFOA levels were much lower; in both pooled blood bank samples and in individual samples, mean serum PFOA levels ranged from 3 to 17 ppb. The highest serum PFOA levels were reported in a sample of children from different geographic regions in the United States (range, 1.9 to 56.1 ppb).

Several wildlife species have been sampled to determine levels of PFOA. PFOA has rarely been found in fish or in fish-eating bird samples collected from around the world. PFOA was found in a few mink livers from Massachusetts, but not found in mink from Louisiana, South Carolina, and Illinois. PFOA concentrations in river otter livers from Washington and Oregon were less than the quantification limit of 36 ng/g, wet wt. PFOA was not detected at quantifiable concentrations in oysters collected in the Chesapeake Bay and Gulf of Mexico.

E. Summary of Data on Fluorotelomers and Other Perfluoroalkyl Moieties

EPA has concerns about the potential health and environmental effects of polymers containing fluorotelomers or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. The Agency believes that polymers containing such substances should be subject to the premanufacture review process so that EPA can better evaluate and address these concerns. In 1981, the first reports of fluorotelomer alcohol metabolism were reported and clearly showed that PFOA was formed from the 8–2 alcohol (Ref. 8). In more recent research published by 3M and in similar tests reported by the Telomer Research Program (TRP), 8–2 alcohol has been shown to degrade to form PFOA when exposed to activated sludge during accelerated biodegradation studies. A single mechanism had been proposed for the conversion of the 8–2 alcohol to form PFOA, whether through metabolic reaction or environmental degradation. Each intermediate in the stepwise sequence of chemical reactions has been identified confirming the proposed mechanism (Ref. 47 and 48).

In addition, initial test data from a study in rats dosed with fluorotelomer alcohol and other preliminary animal studies on various telomeric products containing fluorocarbons structurally similar to PFAC or PFAS have demonstrated a variety of adverse effects including liver, kidney, and thyroid effects (Ref. 9).

Canadian researchers have developed an analytical methodology to measure airborne organo-fluorine compounds (Ref. 49). Using this technique, the researchers monitored air samples in Toronto and were successful in detecting fluoroorganics, including PFOS derivatives and fluorotelomer alcohols. DuPont commissioned a preliminary study in North America by these same researchers and found similar results in six different U.S. and Canadian cities (Ref. 10). While these studies are only preliminary and certainly not conclusive, the fact that the Canadian researchers found fluorotelomer alcohols in the air in six different cities is significant. This finding is indicative of widespread fluorotelomer alcohol distribution, and it further indicates that air may be a route of exposure to these chemicals, which can ultimately become PFOA. The TRP, in developing radiolabeled 8–2 alcohol, noted the volatile nature of this material and the rampant loss of non-radio labeled material attributed to a high vapor pressure (Ref. 50).

Although the source of the fluorotelomer alcohols cannot be determined from the study, most (85% of the production volume) fluorotelomer alcohols produced are used in the manufacture of high molecular weight polymers. These fluorotelomer alcohols are generally incorporated into the polymers via covalent ester linkages, and it is possible that degradation of the polymers may result in release of the fluorotelomer alcohols to the environment. This hypothesis has been posed to TRP, which has begun to investigate whether fluorotelomer-based polymers may be a source of PFOA in the environment (Ref. 51).

Based on the presence of fluorotelomer alcohols in the air, the growing data demonstrating that fluorotelomer alcohols metabolize or degrade to generate PFOA (Ref. 11), the demonstrated toxicity of 8–2 alcohol and certain compounds containing fluorotelomers, and the possibility that polymers containing fluorotelomers could degrade in the environment thereby releasing fluorotelomer alcohols or other perfluoroalkyl-containing substances, EPA can no longer conclude that such polymers ''will not present an unreasonable risk of injury to health or the environment'' as required for an exemption under section 5(h)(4) of TSCA. Therefore, EPA is proposing to exclude polymers that contain fluorotelomers as an integral part of their composition, except as impurities, from the polymer exemption at 40 CFR 723.250.

Similarly, EPA does not have specific data demonstrating that polymers containing perfluoroalkyl moieties other than PFAS, PFAC, or fluorotelomers present the same concerns as those containing PFAS, PFAC, or fluorotelomers. Nevertheless, EPA is also proposing to exclude polymers containing perfluoroalkyl moieties, consisting of a CF3- or longer chain length, that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule from the polymer exemption. Available data indicate that compounds containing

PFAS or PFAC may degrade in the environment thereby releasing the PFAS or PFAC moiety, and that fluorotelomers may degrade in the environment to form PFAC. Based on these data, EPA believes that it is possible that polymers containing these other types of perfluoroalkyl moieties could also degrade over time in the environment, thereby releasing the perfluoroalkyl moiety. EPA also believes that once released, such moieties may potentially degrade to form PFAS or PFAC. EPA does not believe, therefore, that it can continue to make the ''will not present an unreasonable risk of injury to health or the environment'' finding for such polymers and is proposing to exclude them from the polymer exemption. EPA is specifically requesting comment on this aspect of the proposed rule. Please see Unit VII. of this document for specific information that EPA is interested in obtaining to evaluate whether continued exemption for polymers containing fluorotelomers or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule is appropriate.

V. Objectives and Rationale for This Proposed Rule

The objective of this proposed rule is to amend the polymer exemption rule to exclude polymers containing as an integral part of the polymer composition, except as impurities, any one or more of certain perfluroalkyl moieties consisting of a CF3- or longer chain length from eligibility for the exemption from TSCA section 5 reporting requirements allowed under the 1995 amendments to the polymer exemption rule. In section 5(a)(1)(A) of TSCA, Congress prohibited persons from manufacturing (including importing) new chemical substances unless such persons submitted a PMN to EPA at least 90 days before such manufacture. Pursuant to section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, will not present an unreasonable risk of injury to health or the environment. Section 5(h)(4) also authorizes EPA to amend or repeal such rules.

While TSCA does not contain a definition of unreasonable risk, the legislative history indicates that the determination of unreasonable risk requires a balancing of the considerations of both the severity and probability that harm will occur against the effect of the final regulatory action on the availability to society of the benefits of the chemical substance. [House Report 1341, 94th Cong. 2nd Session, 14 (1976)]. This analysis can include an estimate of factors such as market potential, the effect of the regulation on promoting or hindering the economic appeal of a substance, environmental effects, and many other factors that are difficult to define and quantify with precision. In making a determination of unreasonable risk, EPA must rely not only on available data, but also on its professional judgment. Congress recognized that the implementation of the unreasonable risk standard ''will vary on the specific regulatory authority which the Administrator seeks to exercise.''

The polymer exemption rule is intended to exempt from certain section 5 requirements polymers that EPA believes pose a low risk of injury to health or the environment. The exemption criteria are therefore designed to exempt polymers that are of low concern because of their stability, molecular size, and lack of reactivity, among other properties. In contrast, EPA has excluded certain polymers from the exemption where:

- The Agency has insufficient data and review experience to support a finding that they will not present an unreasonable risk. Or
- The Agency has found that under certain conditions, the polymers may present risks which require a closer examination of the conditions of manufacturing, processing, distribution, use, and disposal during a full 90-day PMN review (i.e., the Agency has information suggesting that the conditions for an exemption under section 5(h)(4) are not met).

This approach allows the Agency to maintain full regulatory oversight on potentially higher risk polymers while promoting the manufacture of low-risk polymers.

Based on the data currently available, EPA believes, for the reasons that follow it no longer can make a generally-applicable finding, without additional information, that the manufacture, processing, distribution in commerce, use, and/or disposal of polymers containing certain perfluoroalkyl moieties consisting of a CF3- or longer chain length will not present an unreasonable risk of injury to health or the environment. This exclusion includes polymers that contain any one or more of the following: PFAS; PFAC; fluorotelomers; or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. To the contrary, EPA believes that the risks presented by such polymers should be evaluated during the 90-day PMN review period that Congress contemplated for new chemicals under section 5(a)(1)(A) of TSCA.

First, PFOS and PFOA, which are members of the PFAS and PFAC category of chemicals as defined in Unit IV.B., have a high level of toxicity and have shown liver, developmental, and reproductive toxicity at very low dose levels in exposed laboratory animals. The primary health effects of concern for PFOS, based on available data, are liver effects, developmental effects, and mortality. The mortality is associated with a steep dose/response across all ages and species. The primary health effects of concern for PFOA are liver toxicity and developmental toxicity. The health effects of PFOS and PFOA are discussed more fully in Unit IV.D.5. With regard to fluorotelomers, it has been demonstrated that the fluorotelomer 8–2 alcohol can be converted to PFOA through metabolic reaction and environmental degradation. Moreover, initial test data from a study in rats dosed with fluorotelomer alcohol and other preliminary animal studies on various telomeric products containing fluorocarbons structurally similar to PFAC or PFAS have demonstrated a variety of toxic effects. With regard to polymers containing perfluoroalkyl moieties other than PFAS, PFAC, or fluorotelomers that would be subject to the rule, EPA does not have specific data demonstrating that such polymers present the same concerns as those containing PFAS, PFAC, or fluorotelomers. Nonetheless, based on available data which indicates that compounds containing PFAS or PFAC may degrade in the environment thereby releasing the PFAS or PFAC moiety, and that fluorotelomers may degrade in the environment to form PFAC, EPA believes that it is possible for polymers containing perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule to also degrade over time in the environment thereby releasing the perfluoroalkyl moiety. EPA also believes that once released, such moieties may potentially degrade to form PFAS or PFAC.

Second, PFOS and PFOA are expected to persist in the environment and they may bioaccumulate. These chemicals are stable to hydrolysis, appear to be stable to photolysis, and do not

measurably biodegrade in the environment. PFOS and PFOA have been found in the blood of workers exposed to the chemicals and in the general population of the United States and other countries. They have also been found in many terrestrial and animal species worldwide. The widespread distribution of the chemicals suggests that PFOS and PFOA may bioaccumulate. Exposure and environmental fate data are discussed more fully in Unit IV.D.3. and Unit IV.D.4. respectively. EPA has also received preliminary data that indicates that certain perfluoroalkyl compounds including fluorotelomer alcohols are present in the air in some large cities. These preliminary data suggest that there may be widespread distribution of fluorotelomer alcohols and that air may be a possible route of exposure to such chemicals.

Third, although the Agency has far more data on PFOS and PFOA than on other PFAS and PFAC chemicals, EPA believes that other PFAS and PFAC chemicals may share similar toxicity, persistence and bioaccumulation characteristics. Based on currently available information, EPA believes that, while all PFAS and PFAC chemicals are expected to persist, the length of the perfluorinated chain may have an effect on the other areas of concern for these chemicals. In particular, there is some evidence that PFAS/PFAC moieties with longer carbon chains may present greater concerns for bioaccumulation potential and toxicity than PFAS/PFAC moieties with shorter carbon chains. (Refs. 5, 6, and 7).

Fourth, EPA has evidence that polymers containing PFAS or PFAC may degrade, possibly by incomplete incineration, and release these perfluorinated chemicals into the environment (Ref. 3). Even under routine conditions of municipal waste incinerators, the Agency believes that the PFAS and PFAC produced by oxidative thermal decomposition of the polymers will remain intact (the typical conditions of a MWI are not stringent enough to cleave the carbon-fluorine bonds) to be released into the environment. It has also been demonstrated that PFAS or PFAC-containing compounds may undergo degradation (chemical, microbial, or photolytic) of the non-fluorinated portion of the molecule leaving the remaining perfluorinated acid untouched (Ref. 2). The Agency further anticipates that a carpet treated with a stain resistant polymer coating containing fluorochemicals would be exposed to conditions over time that could lead to the release of chemical substances which may biodegrade to form PFAC. Further degradation of the PFAC degradation product is extremely difficult. This possibility is consistent with the previously cited degradation studies.

As discussed in Unit II.C.2, EPA does not have specific data demonstrating that perfluoroalkyl moieties other than PFAS, PFAC, or fluorotelomers that would be subject to the rule present the same concerns as PFAS, PFAC, or fluorotelomers. EPA is nevertheless proposing to exclude polymers containing perfluoroalkyl moieties consisting of a CF3- or longer chain length that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule from the polymer exemption. Based on the data summarized in Unit V., EPA believes that it is possible for polymers containing these perfluoroalkyl moieties to degrade in the environment thereby releasing the perfluoroalkyl moiety. EPA also believes that once released, such moieties may potentially degrade to form PFAS or PFAC. EPA believes therefore, that polymers containing these perfluoroalkyl moieties should be evaluated for potential health or environmental concerns through the PMN process.

Efforts are currently underway to develop a better understanding of the environmental fate, bioaccumulation potential, and human and environmental toxicity of PFAS and PFAC chemicals as well as fluorotelomers and other perfluoroalkyl moieties. EPA has insufficient evidence at this time, however, to definitively establish a carbon chain length at which PFAS, PFAC, fluorotelomers, or other perfluoroalkyl moieties that would be subject to the rule will not present an unreasonable risk of injury to health or the environment, which is the determination necessary to support an exemption under section 5(h)(4) of TSCA. Therefore, EPA believes it is reasonable to exclude from the polymer exemption rule polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length. This exclusion includes polymers that contain any one or more of the following: PFAS; PFAC; fluorotelomers; or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.

VI. Other Options Considered

A. Exclude Polymers Containing PFAS, PFAC, Fluorotelomers, or Perfluoroalkyl Moieties That Are Covalently Bound to Either a Carbon or Sulfur Atom Where the Carbon or Sulfur Atom is an Integral Part of the Polymer Molecule, But Only if These Perfluoroalkyl Moieties Contain Greater Than Four Carbon Atoms

This option would allow an exemption for polymers containing PFAS, PFAC, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule, where the perfluoroalkyl moiety contains fewer than five carbon atoms. This option was rejected because, based on available information, EPA cannot continue to find that such polymers ''will not present an unreasonable risk to human health and the environment.'' EPA will continue to evaluate whether exemptions for polymers containing PFAS, PFAC, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule with smaller chain lengths in the perfluoroalkyl moiety are appropriate for future exemption under the polymer exemption rule.

B. Make the Scope of This Proposed Rule Consistent With the SNURs on Perfluorooctyl Sulfonates (67 FR 11007; March 11, 2002 and 67 FR 72854; December 9, 2002)

These two SNURs cover perfluorooctanesulfonic acid (PFOSH) and certain of its salts (PFOSS), perfluorooctanesulfonyl fluoride (POSF), certain higher and lower homologues of PFOSH and POSF, and certain other chemical substances, including polymers, that are derived from PFOSH and its homologues. These chemicals are collectively referred to as perfluoroalkyl sulfonates, or PFAS. Today's proposed rule would exclude from eligibility polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length. This exclusion includes polymers that contain any one or more of the following: PFAS; PFAC; fluorotelomers; or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. Therefore, if the proposed rule were to be made consistent with the SNURs, only PFAS-containing polymers

would be excluded from the polymer exemption rule. This option would have continued to allow exemption under the polymer exemption rule for polymers containing:

- PFAS that are not specifically derived from PFOSH (specifically, the C4 to C10 carbon chain lengths addressed in the SNUR).
- PFAC; fluorotelomers; or other perfluoroalkyl moieties, for which EPA cannot make a ''will not present an unreasonable risk to human health or the environment'' finding.

C. Exclude From Exemption PFAS (and Not PFAC) Containing Any Number of Carbon Atoms Deemed Appropriate

This option was rejected because although it would remove polymers containing PFAS from exemption under the polymer exemption rule, it would have continued to allow exemption for polymers containing PFAC, for which EPA cannot make a ''will not present an unreasonable risk to human health or the environment'' finding. This option could also encourage companies to use these chemicals as substitutes for PFOS.

D. Exclude From Exemption All Fluorine-containing Polymers

This option would have excluded from exemption under the polymer exemption rule all fluorine-containing polymers. This option was rejected because EPA does not believe, based on the best available data, that all polymers containing fluorine present concerns that would justify excluding them from the exemption. EPA will continue to evaluate whether exemption for fluorine-containing polymers is appropriate under the polymer exemption rule.

VII. Request for Comment on Specific Issues

EPA is requesting specific responses to the following:

- Is exemption for polymers containing perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule and where the perfluoroalkyl moiety consists of a CF3- or longer chain length appropriate under the polymer exemption rule?

The Agency is looking for information showing whether or not polymers containing such substances degrade and release fluorochemical residual compounds into the environment, and information concerning the toxicity and bioaccumulation potential of such known or possible fluorochemical breakdown products.

In particular, the Agency is also looking for information showing whether such polymers containing perfluoroalkyl moieties with smaller chain lengths (i.e., less than 8 carbons) can degrade and release fluorochemical residual compounds into the environment. If degradation is shown to occur, the Agency would then want information indicating whether once released, these compounds exhibit characteristics similar to PFOS or PFOA in terms of persistence, bioaccumulation, or toxicity, or otherwise exhibit characteristics of potential concern.

- Those who are manufacturing or importing polymers under the existing exemption would have one year from the effective date to complete the PMN process. EPA is specifically requesting comment on this or other alternatives for implementing the final rule that would achieve the purposes of TSCA section 5 without disrupting ongoing manufacture or import of currently-exempt polymers.

VIII. Economic Considerations

EPA has evaluated the potential costs of eliminating the polymer exemption for the chemicals described in this proposal. The results of this evaluation are contained in a document entitled ''Economic Analysis of the Amendment of the Polymer Exemption Rule To Exclude Certain Perfluorinated Polymers'' (Ref. 54). A copy of this economic analysis is available in the public docket for this action, and is briefly summarized here.

As a result of the elimination of the polymer exemption for the chemicals described in this proposal, any person who intends to manufacture (defined by statute to include import) any of these polymers, which are not already on the TSCA Inventory, would have to first complete the TSCA premanufacture review process prior to commencing the manufacture or import of such polymers. Any person who relied on the exemption in the past and currently manufactures an affected polymer would have to complete the TSCA premanufacture review process to continue the manufacture of such polymers after the effective date of the final rule. In order to provide an opportunity for these existing manufacturers to complete the PMN process without disrupting their manufacture of the affected polymers, the Agency is seeking comment on approaches for structuring a delayed effective date or phase in period for the amendment. For purposes of this analysis, the Agency assumes that existing manufacturers will complete the PMN process within the first year after the effective date of the final rule.

The industry costs for completing and submitting a PMN reporting form are estimated to be $7,267 per chemical. Because the proposed rule would eliminate the cost of complying with the recordkeeping and reporting requirements of the Polymer Exemption Rule, the cost for completing and submitting a PMN as a result of this proposed amendment can be reduced by $308, for a net cost of $6,959 per chemical.

Companies that currently manufacture an affected polymer are estimated to incur a total cost of $6,959 per chemical. Companies that do not currently manufacture an affected polymer, but begin to manufacture such polymers in the future, may also incur potential costs of $19,416 associated with potential delays in commercialization of the new chemical. These companies are estimated to incur a total cost of $26,375 per chemical as a result of this rulemaking (Ref. 52).

The potential number of PMNs that may be submitted each year if the proposed rule is finalized was estimated using the 200 polymer reports received annually under the polymer exemption rule. EPA estimates that this proposal might affect a maximum of six percent of the 200 polymers reported annually, and therefore estimates that a maximum of 12 PMNs may be submitted each year if the proposed rule is finalized. Using the same estimated number of 12 chemicals per year for the 10 years that affected polymers were exempt from PMN requirements under the polymer exemption rule, EPA estimates that a maximum of 120 previously exempt chemicals (12 chemicals x 10 years) could be expected to complete and submit a PMN under the final rule. Thus, the Agency estimates that a maximum of 132 PMNs might be submitted during the first year after the effective date of the final rule, and that a maximum of 12 PMNs might be submitted each subsequent year (Ref. 53).

Using the estimated per chemical costs and the estimated number of PMNs anticipated, EPA estimates the potential impact of this proposal on industry to be a total annual costs for existing manufacturers of $835,080 ($6,959 per chemical costs x 120 chemicals), and a total annual cost for new manufacturers of $316,500 ($26,375 per chemical costs x 12). The total annual potential industry compliance costs of the proposed rule in the first year is estimated to be $1,151,580, which will decrease to an estimated

annual cost of $316,500 in subsequent years.

In addition, as was the case prior to the promulgation of the polymer exemption rule in 1995, the Agency recognizes that the submission of a PMN may lead to other regulatory actions under TSCA, for example consent orders issued under TSCA section 5(e). Any such actions are highly dependent on the circumstances surrounding the individual PMN (e.g., available information and scientific understanding about the chemical and its risks at the time the PMN is being reviewed). Such potential actions and any costs associated with them would not be a direct result of the proposed amendments to the polymer exemption rule. Nevertheless, EPA believes it is informative to provide a brief discussion of the Agency's previous and ongoing regulatory activities with respect to potentially affected polymers.

IX. References

These references have been placed in the public docket that was established under docket ID number EPA–HQ–OPPTS–2002–0051 for this rulemaking as indicated under **ADDRESSES**. The public docket includes information considered by EPA in developing this proposed rule, including the documents listed below, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these other documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the technical person listed in **FOR FURTHER INFORMATION CONTACT**. Reference documents identified with an AR are cross-indexed to non-regulatory, publicly accessible information files maintained in the TSCA Nonconfidential Information Center. Copies of these documents can be obtained as described in **ADDRESSES**.

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X. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Pursuant to Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has designated this proposed rule as a ''significant regulatory action'' under section 3(f) of the Executive Order because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This action was therefore submitted to OMB for review under this Executive Order, and any changes to this document made at the suggestion of OMB have been documented in the public docket for this rulemaking.

EPA has prepared an economic analysis of the potential impacts of this proposed revision to the polymer exemption rule. This economic analysis (Ref. 54) is available in the public docket for this action and is briefly summarized in Unit VIII.

B. Paperwork Reduction Act

The information collection requirements related to the submission of PMNs are already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* That Information Collection Request (ICR) document has been assigned EPA ICR number 0574.12 and OMB control number 2070–0012. This proposed rule does not impose any new requirements that require additional OMB approval.

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required PMN, and maintain the required records.

Based on the estimated burden in the existing ICR, if an entity were to submit a PMN to the Agency, the annual reporting burden is estimated to average between 95 and 114 hours per response, with an midpoint respondent burden of 107 hours. This estimate was adjusted to account for the elimination of the existing burden related to the recordkeeping and reporting requirements in the polymer exemption rule, which is estimated to impose a burden on industry of six hours per chemical, i.e., two hours for reporting, and four hours for recordkeeping. The

net paperwork burden for submitting a PMN as a result of this proposed amendment is therefore estimated to be 101 hours per PMN submission. The burden hour cost for this proposed rule is estimated to be $4,459. In addition, PMN submissions must be accompanied by a user fee of $2,500 (set at $100 for small businesses with annuals sales of less than $40 million).

Based on the high-end assumption of 12 PMN submissions annually, the annual burden is estimated to be 1,212 hours (12 × 101 hours). The one-time burden for the companies that submit PMNs for chemicals already in production is estimated to be a maximum of 12,120 hours (120 chemicals x 101 hours per submission).

An agency may not conduct or sponsor, and a person is not required to respond to an information collection request subject to the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9 and included on any related collection instrument (e.g., on the form or survey).

Submit any comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, along with your comments on the proposed rule as instructed under **ADDRESSES**. The Agency will consider any comments related to the information collection requirements contained in this proposal as it develops a final rule.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as:

- A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 based on the applicable NAICS code for the business sector impacted.
- A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000.
- A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The regulated community does not include any small governmental jurisdictions or small not-for-profit organizations. For small businesses, the Agency assessed the impacts on small chemical manufacturers in NAICS codes 325 and 324110. The SBA size standards for sectors under NAICS 325 range from 500 to 1,000 employees or fewer in order to be classified as small. The size standard for NAICS code 324110, petroleum refineries, is 1,500 employees.

Based on estimates of the number of PMNs expected to be submitted as a result of this action, it appears that 12 or fewer businesses would be affected per year. The five companies that manufacture the majority of the volume of chemicals that will be affected by the polymer exemption rule belong to either or both of the Fluoropolymer Manufacturers Group, and the Telomer Research Program. These two groups, which have no other members beyond the five companies, are negotiating enforceable consent agreements and other voluntary testing arrangements with the Agency for testing specific chemicals that would be affected by the polymer exemption rule. The two groups have told the Agency that their member companies manufacture the majority of the volume of chemicals that would be affected by the rule. None of these five companies meet the definition of small under the Small Business Administration employee size criteria. The remaining volume of chemicals that could be affected by the rule is low enough so that even if a small company were to be affected, a significant number of businesses would not be affected, nor would any individual small business experience significant impacts. In addition to the estimated impact of having to submit a PMN (see estimates in Unit VIII.), small businesses with less than $40 million in annual sales are entitled to a reduced user fee of $100 for submitting a PMN, rather than the $2,500 user fee, which would further reduce any impacts of the rule on small businesses.

D. Unfunded Mandates Reform Act

Based on EPA's experience with past PMNs, State, local, and tribal governments have not been affected by this reporting requirement, and EPA does not have any reason to believe that any State, local, or tribal government will be affected by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Federalism

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications,'' because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Consultation and Coordination With Indian Tribal Governments

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have any affect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because this action is not designated as an ''economically significant'' regulatory action as defined by Executive Order 12866, nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

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

This proposed rule is not subject to Executive Order 13211, entitled *Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not designated as an ''economically significant'' regulatory action as defined by Executive Order 12866, nor is it likely to have any significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not impose any technical standards that would require EPA to consider any voluntary consensus standards.

J. Environmental Justice

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency does not need to consider environmental justice-related issues.

List of Subjects in 40 CFR Part 723

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 8, 2006.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxics Substances.

Therefore, it is proposed that 40 CFR part 723 be amended as follows:

PART 723—[AMENDED]

1. The authority citation for part 723 would continue to read as follows:

Authority: 15 U.S.C. 2604.

2. Section 723.250 is amended as follows:

a. By adding several definitions in alphabetical order to paragraph (b).

b. By adding a paragraph (d)(6).

§ 723.250 Polymers.

* * * * *

(b) * * *

Fluorotelomers means the products of telomerization, the reaction of a telogen (such as pentafluoroethyl iodide) with an ethylenic compound (such as tetrafluoroethylene) to form low molecular weight polymeric compounds, which contain an array of saturated carbon atoms covalently bonded to each other (C-C bonds) and to fluorine atoms (C-F bonds). This array is predominantly a straight chain, and depending on the telogen used produces a compound having an even number of carbon atoms. However, the carbon chain length of the fluorotelomer varies widely. The perfluoroalkyl groups formed by this process are usually, but do not have to be, connected to the polymer through a functionalized ethylene group as indicated by the following structural diagram: (Rf-CH_2-CH_2-Anything).

Perfluororalkyl carboxylate (PFAC) means a group of saturated carbon atoms covalently bonded to each other in a linear, branched, or cyclic array and covalently bonded to a carbonyl moiety and where all carbon-hydrogen (C-H) bonds have been replaced with carbon-fluorine (C-F) bonds. The carbonyl moiety is also covalently bonded to a hetero atom, typically, but not necessarily oxygen (O) or nitrogen (N).

Perfluoroalkyl sulfonate (PFAS) means a group of saturated carbon atoms covalently bonded to each other in a linear, branched, or cyclic array and covalently bonded to a sulfonyl moiety and where all carbon - hydrogen (C-H) bonds have been replaced with carbon - fluorine (C-F) bonds. The sulfonyl moiety is also covalently bonded to a hetero atom, typically, but not necessarily oxygen (O) or nitrogen (N).

* * * * *

(d) * * *

(6) *Polymers which contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length.* After [*insert date 1 year after date of publication of the final rule in the* **Federal Register**] a polymer cannot be manufactured under this section if the polymer contains as an integral part of its composition, except as impurities, one or more of the following perfluoroalkyl moieties consisting of a CF3- or longer chain length: Perfluoroalkyl sulfonates (PFAS), perfluoroalkyl carboxylates (PFAC), fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.

(i) Except as provided in paragraph (d)(6)(ii) of this section, any polymer that is subject to paragraph (d)(6) of this section and that has been manufactured prior to [*insert date 1 year after date of publication of the final rule in the* **Federal Register**] may no longer be manufactured after [*insert date 1 year after date of publication of the final rule in the* **Federal Register**] unless that polymer has undergone a premanufacture review in accordance with section 5(a)(1)(A) of TSCA and 40 CFR part 720.

(ii) Paragraph (d)(6) of this section does not apply to polymers which are already on the list of chemical substances manufactured or processed in the United States that EPA compiles and keeps current under section 8(b) of TSCA.

* * * * *

[FR Doc. 06–2152 Filed 3–6–06; 8:45 am]

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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.

S. 1989/P.L. 109–175

To desginate the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the ''Holly A. Charette Post Office''. (Feb. 27, 2006; 120 Stat. 190)

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